The University of Chicago

THE KENTUCKY POOR LAW
1792-1936

A DISSERTATION SUBMITTED TO THE FACULTY OF THE SCHOOL OF SOCIAL SERVICE ADMINISTRATION IN CANDIDACY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

1938

By
EMIL McKEE SUNLEY

THE UNIVERSITY OF CHICAGO PRESS
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AUTHOR'S PREFACE

This monograph dealing with the historical background of the poor laws in the Commonwealth of Kentucky is part of a more comprehensive study which is available in manuscript form at Harper Memorial Library, University of Chicago. One chapter of this larger study has been summarized and published as an article "'Pauper Idiots and Lunatics' in Kentucky," in the Social Service Review, June, 1939.

The primary objective of this project was to gain an increased understanding of the present scope and nature of the welfare program of Kentucky. It may be urged that our current public social services can be understood adequately and a clear road charted ahead only when we have an understanding and evaluation of earlier public welfare programs. During this wartime period it is even more imperative that such knowledge of the historical development of our public welfare programs be integrated into our present and post-war planning for our public social services. An analysis and study of the poor laws of Kentucky, a state which has always assumed considerable responsibility for the care of its disadvantaged people, should aid this state even more effectively to plan for the care of these groups of its citizens.

Finally, it is a pleasure to acknowledge my obligation, in connection with the preparation of this study to Dr. Sophonisba P. Breckinridge, Samuel Deutsch Professor of Public Welfare Administration, University of Chicago, who suggested the study and gave help and guidance at many points in its preparation. I am deeply indebted to, and cannot repay, Dr. Breckinridge, a native Kentuckian, for the inspiration and able counsel which she gave so generously. She made available materials from her own library, she suggested the use of many resources in her native state, and she gave generously of her own time in the supervision and direction of the study. I am also glad to acknowledge the assistance of Miss Maud E. Lavery, Research Assistant, School of Social Service Administration, in the preparation of the manuscript for the press.

WEST VIRGINIA UNIVERSITY E. M. S.

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CHAPTER I

PURPOSE AND SCOPE OF THE STUDY

The interest in public relief during the past decade when state and federal governments have found it necessary to assume increased responsibility for social services, has called attention anew to the history and growth of the poor laws of the various states. An intensive analysis of these laws, such as is presented by this study of the state of Kentucky, should aid greatly in a more constructive use of this experience and should result in the formulation of more adequate plans for the care of the poor.

There are several reasons why the Kentucky poor law should be the object of special study. Kentucky was not a part of the Northwest Territory; therefore, it did not share many of the features of the administration of those states, such as confusion with reference to county and township responsibility or the widespread use of institutional provision for the poor. Since Kentucky was a part of the parent state of Virginia until June 1, 1792, it inherited the basic principles of the Virginia act of 1785 which transferred the poor relief responsibilities from the vestries and church-wardens to the overseers of the poor. However, the Kentucky act of 1793 not only followed the precedent of public responsibility as established by the Virginia act of 1785, but it also made clear that the counties, and neither townships nor municipalities--as in the New England States--were to be responsible for the care of the poor.

Not only did Kentucky have a distinct advantage over the New England States by thus making use of a larger unit of local government for the administration of the poor law, but there were also several instances in which the state assumed definite responsibility in meeting the problems of the poor. First, there was the early use of vacant and unappropriated state lands to relieve destitution. There was also an important land act of 1820 which gave destitute widows, those with estates of less than one

hundred dollars in value each, one hundred acres of land. This act preceded by one hundred and eight years the mothers' allowance act of 1928. The care of pauper idiots and lunatics by cash allowances from the public treasury was further evidence of state responsibility, although this proved to be a greatly abused provision. The difficulties in this type of care were that there was no case work supervision of the patients, there were no psychiatrists to make the diagnosis, partisan politics entered into the selection of the committees, patients were often regarded as economic assets, and effort was rarely put forth to give training and re-education even to the more hopeful cases.

For one hundred and eighty-five years Kentucky had been, before becoming a state, a part of Virginia, and an interesting question was presented as to the extent to which Kentucky had made use of the principles and methods of the old English Poor Law. The English Poor Law was characterized by the principles of local administration, local responsibility, settlement, and family responsibility. Although Kentucky immediately accepted two of these principles, namely, local administration and local responsibility, family responsibility was not added until 1906, and the statutes have remained silent with reference to settlement as a prerequisite for poor relief.

There was another significant question to be asked. Most state poor laws are survivals or vestiges of the English Poor Law and have remained unchanged in our statutes in spite of a constantly changing social order. The breakdown of the old machinery during the economic depression of the twentieth century, the advent of federal relief, the formation of emergency organizations, and the passage of the Social Security Act in 1935 have caused social workers to realize the necessity of obtaining the revision or abolition of these old poor laws in order to integrate the assistance measures in the new state-federal relationships.

Since Kentucky has had such a long history of public relief provision based upon the county as an administrative unit, some interesting questions arise with reference to the present status of outdoor relief, such as, the extent to which these local units of government were able to meet their relief responsibilities from 1930 to 1936, the present use of the poorhouses, the use of subsidies, and the development of categorical assistance other than general home relief.

The purpose of this study has been to present a picture of the chronological development of the poor law of Kentucky from the early pre-statehood days to 1936, at which time the State Department of Public Welfare was reorganized and plans subsequently made for participation in the provisions of the Social Security Act. No attempt has been made to evaluate the legislative provisions, and it has not been possible to deal fully with the problem of administration. Each of these tasks would call for a separate and distinct study.

Although this project has been largely limited to a consideration of the poor law, apprenticeship, illegitimacy, and vagrancy, which were closely associated problems, were included for the period prior to 1860, or approximately up to the beginning of the Civil War.

The chief sources of information for this study have been the session laws of Kentucky, the revised statutes and the general statutes, the decisions of the Court of Appeals, the opinions of the Attorney General, government reports, special studies and surveys, and general histories of both Virginia and Kentucky. A very careful search was made of the legislative acts, and it is believed that, within the field studied, the material is complete.

CHAPTER II

OUTDOOR RELIEF

Inasmuch as the Kentucky poor law with reference to outdoor relief has remained practically unchanged since the middle of the nineteenth century, the treatment of this subject seems to fall logically into two periods, (1) the period from June 1, 1792 to 1852 when the statutes were revised following the adoption of the third Constitution in 1850, and (2) the period from 1852 to 1936 when the State Department of Public Welfare was reorganized so that the state might participate in the provisions of the Social Security Act.

The term "outdoor relief" is here used in the ordinary sense, meaning relief in the home, and is to be distinguished from "indoor" or poorhouse relief which has been discussed separately.[1] However, there were several problems with reference to outdoor relief to which special attention was given such as the care of destitute negroes and mulattoes after the Civil War, the relief of drought, flood, and cyclone sufferers of the 1880's and 1890's, and the use of subsidies by private charities.[2] There was also the provision for the poor by the municipalities, and the various forms of categorical assistance of the twentieth century such as soldier's, aged, blind, and widow's allowances,[3] but these subjects also have been discussed separately.

1792-1852

When Kentucky separated from the parent state of Virginia in 1792, it retained most of the political traditions which had grown up in Virginia during the seventeenth and eighteenth centuries. Counties, as defined by the Constitution of 1792, were little more than territorial units for a few local officials.[4]

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[1] See below, pp. 35-59.

[2] See below, pp. 25-34.

[3] See below, pp. 116-36.

[4] Efficiency Commission of Kentucky, Report of the Government of Kentucky (Frankfort: The State Journal Co., 1924), I, 550.

The second Constitution, 1799, gave much greater authority to the county courts than had been given by the Constitution of 1792. While under the first Constitution, sheriffs and coroners were elected, and clerks of the courts were appointed, the second Constitution provided for the county courts to appoint inspectors, collectors and their deputies, constables, jailers, and other superior officers. In the selection of sheriffs, the county courts were to recommend two justices, and the Governor was to make the appointment. By the same method of recommendation, the surveyors, coroners, and justices of the peace were selected by the Governor. The courts appointed the clerks as under the first Constitution, but they were to be certified by the Court of Appeals which meant that they had been examined by the clerk of the upper court and found to be qualified. In short, the Constitution of 1799 attempted to set up a system of county government which was more than a mere collection of detached officers.[1]

Shortly after the state was admitted to the union on June 1, 1792, the members of the legislature gave their attention to the problems of the poor. On December 19, 1793, the county courts were authorized to make a county levy for the relief of the poor who, because of personal debility or otherwise, were not able to support themselves. The sheriffs or collectors of the county levy were to pay the poor the sums of money allowed by the court.[2] However, Kentucky did not make use of the overseers of the poor as established by the Virginia act of 1785, but left the entire administration of the act with the county courts. This early act provided only for a system of outdoor relief, and nothing was said about the use of poorhouses although they later made their appearance after having been specifically authorized by an act of 1821. It is significant that while the act of 1793 made use of the English Poor Law principles of local administration and local responsibility, nothing was said about family responsibility, which was not added until 1906, nor was any reference made to settlement as a prerequisite to poor relief. This latter point was never made a part of the Kentucky poor law.

In 1798, an attempt was made to make justice available to

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[1] Ibid., p. 551.

[2] Littell's Laws, December 19, 1793, Vol. I, chap. 118, secs. 1-2.

the poor and sick, and to provide for those who did not have the ability nor the power to sue. In order to meet these needs, the legislature provided that all poor persons who had a cause of action against anyone within the commonwealth should have, at the discretion of the court in which the poor person was suing, free original writs and writs of subpoena. The clerk of the court was to assign counsel and appoint the other necessary officers in order to carry out the suit, but they were to receive no pay for their services.[1]

In the same year, 1798, the legislators believed that many friendless and indigent persons were being brought into the state and left upon the benevolence of the citizens. To remedy this situation a justice of the peace was authorized to issue a warrant for any one who brought a poor person from another state into Kentucky or from one county to another county who was unable to support himself, or who was likely to become a public charge. A father, mother, or child was not included. On the basis of the warrant, the offender could be brought before the next session of the county court which could compel him to give security that the poor person would not become a public charge. A person could be committed to the county jail until he gave security. If those in the county jail continued to refuse to give security they could be proceeded against under the vagrancy laws.[2]

Although provision was made for general relief of the poor in 1793, it was not until 1803 that the legislature clearly authorized the county courts to grant medical relief where it was believed the need existed. If a physician gave medical care to the poor, when authorized by the county court or a justice of the peace, the court could grant him reasonable compensation from the county levy.[3]

An interesting provision was made for the education of the poor children in Nicholas County in 1837. The act allowed the county court to use, for this purpose, the internal improvement funds which were obtained from the sale of vacant lands in the county north and east of the Tennessee River. The court was to

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[1] Ibid., January 30, 1798, Vol. II, chap. 13, secs. 1-2.

[2] Ibid., February 10, 1798, Vol. II, chap. 51, sec. 1.

[3] Acts, December 23, 1803, chap. 25, sec. 1.

appoint annually three commissioners to select the poor children of the county, place them in the nearest school, and pay their tuition. An annual report to the court was to be made by the commissioners, giving the amount of money spent, and the names of the children aided.[1]

The first and only instance when county overseers of the poor were authorized by the legislature was in 1842 when the county courts of Wayne, Russell, and Hickman Counties were empowered to appoint overseers of the poor instead of making provision for a poorhouse. It was the duty of the overseers of the poor in these counties to provide for the poor as determined by county courts. They were to be bonded, and their salaries were to be determined by the courts.[2]

One of the most interesting aspects of outdoor relief was the county cash allowances authorized by the legislature for specific cases during the period 1835 to 1860. Usually the legislature authorized the county courts to act with a majority of the justices consenting. In most cases the allowances were to continue as long as the recipients were unable to support themselves and were residents of the county from which they were receiving relief. Frequently, the allowances were authorized because the county courts would not make any provision for the poor other than care in the poorhouse. These various provisions are illustrated in the following selected cases:

The legislature, in 1835, authorized the county court of Owen County, a majority of the justices acting, to make an allowance from the county levy for the support of John Simms because of his rheumatism. The support was to continue as long as he was incapacitated.[3]

Jemimah Matthews, of Green County, was a very poor person, over ninety years old, and unable to care for herself. She was living with James Dobson, a son-in-law. The county court refused to make provision for her support except in the poorhouse. Therefore, the legislature, in 1838, requested that the county court grant her an annual allowance of not less than fifty dollars. It was to be paid out of the county levy.[4]

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[1] Ibid., February 17, 1837, chap. 339, secs. 1-2.

[2] Ibid., January 18, 1842, chap. 36, secs. 1-2.

[3] Ibid., February 27, 1835, chap. 295.

[4] Ibid., February 15, 1838, chap. 852.

Tabitha Hix, of Pulaski County, was very poor, aged, and helpless. The county court refused to care for her except in the poorhouse. Since she wanted to remain with her friends and relatives, the legislature authorized the court in 1839 to provide not less than fifty dollars a year for her support out of the county levy.[1]

In 1845, the County Court of Adair County was authorized to make an annual allowance not exceeding eighty dollars for the care of Robert and Mary Price. It was to be paid to the person with whom they were residing, and was to continue as long as they were unable to support themselves and lived in the county. If one died, the survivor was to receive forty dollars a year.[2]

The Green County Court, in 1847, was to make an annual allowance, not exceeding sixty dollars a year, for James Purvis and wife, and not more than thirty dollars a year for Walter Johnson. This provision was to prevent their going to the poorhouse. The court was to appoint a suitable trustee to receive the money and apply it to their benefit.[3]

The Taylor County Court was authorized, in 1849, to make an annual allowance not exceeding fifty dollars for the support of Samuel Hogan, and not require that he go to the poorhouse. The grant was to continue as long as he was unable to support himself and lived in the county.[4]

Provision was to be made by the Fleming County Court, in 1849, for the support of Milly Walker in a private family for not more than fifty dollars a year. The money was to be paid annually to someone selected by the court.[5]

In 1850, the Marion County Court neglected to make a levy to pay Jefferson Hall for the care of two paupers, William and Elizabeth Branham. Therefore, the legislature authorized the court to make the grant for the year 1849. It was to be paid out of unappropriated funds, but, if there were none, it was to be included in the levy for 1850.[6]

The Adair County Court, in 1850, was to make an allowance of not more than thirty dollars each for William P. Johnson, John Janes, Jr., and Rebecca McNeally so that they would not be required to enter the poorhouse. The allowance was to continued as long as they lived in the county and were unable to support themselves. Similar provision was made for the Fleming County Court to support John Vallandingham by an allowance of not more than

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[1] Ibid., February 20, 1839, chap. 1275, secs. 1-2.

[2] Ibid., January 9, 1845, chap. 5.

[3] Ibid., February 17, 1847, chap. 215.

[4] Ibid., January 22, 1849, chap. 84.

[5] Ibid., February 26, 1849, chap. 496.

[6] Ibid., January 24, 1850, chap. 29.

thirty dollars a year.[1]

The County Court of Rockcastle County had made provision, in 1857, for the poorhouse care of Stephen M. Elliott. However, he was not able to go to the poorhouse; and his wife, who was old, feeble, and poor, had supported him. The legislature, in 1858, directed the court to pay Mrs. Elliott the amount which would have been allowed for his support at the poorhouse.[2]

Like plans were made by the legislature for many other cases which presented problems similar to those cited. Allowances were granted to the following persons in the years indicated: Thomas Sweeney of Washington County, 1839;[3] William Smith of Hardin County, 1840;[4] Elizabeth Taylor, an invalid pauper in Fleming County, 1842;[5] George Janes of Adair County, 1842;[6] J. McKinney of Adair County, 1843;[7] a crippled son of Daniel O'Neal, and Sarah Graham of Lewis County, 1846;[8] John Thomas of Adair County, 1846;[9] Bernard Simpson and wife and William Bailey of Adair County, 1847;[10] Lovey Wharton of Jessamine County and Sarah Graham of Lewis County, 1847;[11] Elizabeth Bault of Adair County, 1847;[12] Samuel Hogan of Green County, 1848;[13] Mary Terhoune, a widow in Fleming County, 1848;[14] James Calhoun and John Hill and his wife

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[1] Ibid., January 30, 1850, chap. 56, secs. 1-2.

[2] Ibid., February 15, 1858, Vol. II, chap. 633.

[3] Ibid., February 18, 1839, chap. 1251.

[4] Ibid., January 16, 1840, chap. 83.

[5] Ibid., January 18, 1842, chap. 34, secs. 1-2.

[6] Ibid., February 19, 1842, chap. 231.

[7] Ibid., March 7, 1843, chap. 240.

[8] Ibid., January 29, 1846, chap. 83.

[9] Ibid., chap. 102.

[10] Ibid., February 3, 1847, chap. 151, secs. 1-2.

[11] Ibid., February 9, 1847, chap. 168, secs. 1-2.

[12] Ibid., February 13, 1847, chap. 201.

[13] Ibid., January 29, 1848, chap. 125.

[14] Ibid., chap. 126.

of Adair County, 1848;[1] Thomas Gardner of Bourbon County, 1848;[2] John Jones, Elizabeth Spoon, and Mark Thompson of Adair County, 1849;[3] and John Beard, Sr. and his wife of Adair County, 1850.[4]

The legislature occasionally made other plans for the care of the poor. The most unusual was that of giving the poor person a right to peddle without a license, or arranging for him to obtain a license at a reduced fee.

John Walden, of Allen County, was ill with rheumatism and an indigent with a large family to support. He could do little manual work; therefore, the legislature, in 1843, authorized him to become a vendor of goods, wares, and merchandise without obtaining a peddler's license.[5] Plans were also made for William King of Henry County to obtain an annual peddler's license for ten dollars, and forever after it was to be renewable for the same sum but restricted in its use to Henry County. If he failed to obtain his license he would be subject to the penalties of peddlers without licenses.[6]

Reuben Gill, of Bracken County, was blind and without means to support himself and his family. In order to aid him the legislature authorized him, in 1860, to peddle in the county for five years without a license.[7]

Lindsey W. Sears, of Whitley County, was a cripple who was unable to support himself. He had such a limited education that he could not be a school teacher. Therefore, the legislature, in 1860, gave him the right to peddle in the county without a license.[8]

Provision was again made in 1852 to allow poor persons to sue or defend a suit without fees or costs. The court could assign counsel and a poor person could obtain all the needed services without fees, except that which might be included in the costs when recovered from the other party. Practically the same provision as that of 1798 was made with reference to people who brought poor persons into the state or from one county to another county who were likely to become chargeable. An offender could be apprehended

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[1] Ibid., February 26, 1848, chap. 345, secs. 1-2.

[2] Ibid., March 1, 1848, chap. 554.

[3] Ibid., January 22, 1849, chap. 83.

[4] Ibid., March 4, 1850, chap. 318, secs. 1-2.

[5] Ibid., February 2, 1844, chap. 116, sec. 1.

[6] Ibid., secs. 2-3.

[7] Ibid., January 17, 1860, Vol. I, chap. 77, secs. 1-2.

[8] Ibid., February 23, 1860, Vol. II, chap. 500, secs. 1-2.

on a warrant of a justice of the peace or the judge of the county court where the poor person was brought. After apprehension, he could be released on bail to appear at the next county court, or placed in jail. The court could require an obligation, with good surety, that the poor person would not become chargeable. If surety could not be given, a person could be committed to jail and, after reasonable notice, sold as a vagrant for a period of twelve months.[1]

The most important change which was made in the poor law in 1852 was with respect to its local administration. It must be kept in mind that prior to 1850, the county courts consisted of the justices of the peace, and there was no county judge. Considerable change was made, in 1850, when a new Constitution was adopted which provided for a county court to be presided over by a county judge and two associate judges, but the Constitution also provided that the legislature might abolish the associate judges, and arrange for the association of all or part of the justices with the judge to constitute the court for carrying out the financial business of the county.[2] The associate judges were abolished in 1851,[3] and henceforth, the county court was to consist of the presiding judge elected by the people, except in those instances where the judge and justices were to sit together. At the October meeting, the court, consisting of the judge and justices, was to sit as a court of claims. Among the responsibilities of this October Court was that of settling claims against the county, making provision for the poor and making appropriations and levying the necessary taxes.[4] The county court consisting of the judge alone, however, exercised the power to declare one a pauper or to consign a pauper to the poorhouse. This administrative structure remained practically unchanged until 1891 when a new constitution was adopted, a fiscal court was established, and the responsibilities of the court of claims for the care of the poor were given to the fiscal court.

The Constitution of 1850 indicated that Kentucky had fal-

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[1] Ibid., January 7, 1852, chap. 358, chap. v, sec. 1.

[2] Revised Statutes, 1852, pp. 64-65.

[3] Acts, March 11, 1851, Vol. I, chap. 419, sec. 1.

[4] Ibid., sec. 3.

len under the spell of the democracy of that era which called for the election of public officials. The new Constitution provided for the election of sheriffs, constables, clerks of the circuit courts, assessors, clerks of county courts, coroners, and jailers.[1]

1852-1936

During this period, 1852 to 1936, there were but few changes made in the administration of outdoor relief other than the establishment of the fiscal courts in 1891, the adoption of the principle of family responsibility in 1906, and the appearance of categorical assistance programs beginning with soldier's relief in 1912.[2] The statutes, as in the period prior to the third Constitution of 1850, continued to remain silent on settlement as a prerequisite for poor relief.

When the general statutes were issued in 1873, the provision for the poor was essentially the same as in the act of January 7, 1852. The same penalties, first provided by the act of 1798, were made with reference to bringing poor persons into the state from another state or from one county in the state to another county. While the act of 1852 provided that after reasonable notice had been given, the offender could be sold as a vagrant for twelve months if he had not given an obligation with good security that the poor person would not become chargeable, this provision was changed in 1873, and failure to give the obligation subjected the offender to the payment of a fine of one hundred dollars.[3] The general statutes of 1873 also made provision for the burial of the county poor.[4]

During the 1880's, a few of the larger counties were empowered to establish boards of commissioners consisting of three members who were to be elected by the people for three year overlapping terms. Lawrence County, in 1886, was among the first to have this new type of administrative board.[5] The county judge was

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[1]Efficiency Commission of Kentucky, Report, I, 552.

[2]See below, pp. 116-36.

[3]General Statutes, 1873, chap. 86, sec. 3.

[4]Ibid., sec. 11.

[5]Acts, March 2, 1886, Vol. I, chap. 137, sec. 1.

an ex officio member, and was the presiding officer [1] The powers of the board were the same as those vested in the court of claims.[2] With reference to the poor, this responsibility included the control and management of the poorhouse, and the annual appointment or election of the keeper.[3] However, the major responsibility of the board was to take charge of the county buildings, property, roads, and bridges.[4]

A similar board of commissioners was established in Carter County in 1888, but in this county the board was authorized to levy an ad valorem tax for the support of the poor of not more than twenty-five cents on each one hundred dollars' worth of taxable property in the county.[5] It could also provide and make contracts for the support of the paupers and supply them with necessaries. The powers of the county judge or county court with reference to medical aid and other responsibilities for the poor were repealed.[6]

Other counties in which boards of commissioners were established included Boone, in 1886;[7] Martin,[8] Jefferson,[9] and Knott,[10] in 1888; and Letcher County, in 1890.[11]

Several years later, 1891, a new court was established termed the "fiscal court." The Constitution of 1891 provided that this court was to consist of the judge of the county court and the justices of the peace. The county judge was to be the presiding officer. Instead of a fiscal court consisting of the judge and the justices of the peace, a county might have a fiscal court con-

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[1] Ibid., sec. 5. [2] Ibid., sec. 11.

[3] Ibid., sec. 33. [4] Ibid., sec. 12.

[5] Ibid., April 5, 1888, Vol. II, chap. 873, sec. 14.

[6] Ibid., sec. 24.

[7] Ibid., May 15, 1886, Vol. II, chap. 1184, secs. 11-12.

[8] Ibid., April 6, 1888, Vol. II, chap. 884, sec. 21.

[9] Ibid., chap. 876, sec. 2.

[10] Ibid., April 7, 1888, Vol. II, chap. 925, sec. 12.

[11] Ibid., April 26, 1890, Vol. II, chap. 1076, sec. 18.

sisting of the judge and three commissioners elected at large. In either case, a majority of the members were to constitute a court for the transaction of business. If a city were separated by law from the remainder of the county, the commissioners were to be elected from that part of the county outside the city.[1] The new Constitution also provided that the county courts were to consist of the county judge who was to be a conservator of the peace, and who was to receive a salary as prescribed by law. He was to be commissioned by the governor and vacated his office if he removed himself from the county. The jurisdiction of this court was to be uniform and regulated by general law. Until changed, it was to be the same as then vested in the county courts.[2]

After the Constitution of 1891 had set up the fiscal courts, the legislature provided that if the county judge were absent, a majority of the justices were to elect one of their members to preside.[3] The clerk of the county court was to act as clerk of the fiscal court.[4]

The jurisdiction of the fiscal court, which was a court of record, included the appropriation of county funds authorized by law; the erection and repair of public buildings; securing a jail and a comfortable and convenient place for holding the county court; erection and repair of bridges and other structures; regulation and control of the fiscal affairs and property of the county; provision for the maintenance of the poor including a poorhouse and farm; and provision for the highways of the county. The fiscal courts also had jurisdiction over the tax levies which had been authorized by special acts.[5]

Students of social welfare should give special attention to these powers of the fiscal court, particularly the "provision for the maintenance of the poor including a poor house." The question whether or not this provision conflicted with similar power given to the county courts in 1852 suggests itself at once. There was a conflict, and in 1922 the Court of Appeals held that the power of the fiscal courts which were established in 1892

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[1] Statutes of Kentucky, 1909, pp. 1597-98.

[2] Ibid., p. 1506.

[3] Acts, October 17, 1892, chap. 101, sec. 1.

[4] Ibid., sec. 3. [5] Ibid., sec. 8.

superseded and abolished the authority previously vested in the county court of claims. The question raised in this case was whether the fiscal or the county court of Campbell County was authorized to appoint the poorhouse keeper. The County court appointed one, Silbersack, and the fiscal court appointed Kraft. The Circuit Court held that the fiscal court had the power to appoint the poorhouse keeper, but Silbersack appealed to the upper court and called attention to the sequence of events beginning with the adoption of the new Constitution in 1891. The Constitution had set up the fiscal court, and the legislature had then defined the jurisdiction of both the county and fiscal courts.

The upper court made it clear that the legislature evidently intended to invest the fiscal court with the jurisdiction formerly exercised by the court of claims, and especially with the care of the poor, including the establishment and administration of poor farms. All the duties assigned the county court by the act of 1852 were vested in the fiscal court by the act of 1892, and while the latter did not expressly authorize the appointment of a superintendent of the poorhouse, as did the act of 1852, that power was also included.[1]

The act of 1892 also provided that the question of a commission form of county government could be submitted to the qualified voters if the county judge were petitioned by at least 350 voters. If the voters decided in favor of a commission form of government, the county judge, before the next general election, was to divide the county into three equal population districts for the election of a commissioner from each district for a four year term.[2] This provision was amended in 1920 when the legislature provided that the written petition could be filed by one hundred legal voters instead of by 350.[3]

However, the provisions of the act of 1892, with reference to the fiscal courts, included all counties whether the fiscal court consisted of the county judge and justices or the judge and commissioners.[4]

The jurisdiction of the fiscal courts was expanded in

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[1] Silbersack v. Kraft et al., 194 Kentucky Reports 587 (1922).

[2] Acts, October 17, 1892, chap. 101, sec. 14.

[3] Ibid., 1920, chap. 115, secs. 1-2. [4] Ibid., sec. 17.

1902. Among other things, the courts were to make provision for the care of the poor, establish a poorfarm and poorhouse, provide for the care, treatment, and maintenance of the sick poor, and provide a hospital, or make contracts with already existing hospitals. This act was to go into effect immediately, as there were many sick poor persons who were not receiving proper care in the poorhouses.[1]

The act of 1892 pertaining to the powers of the fiscal court was amended again in 1906 so that the courts could appropriate county funds for the benefit of infirmaries for the sick and for colleges.[2]

Under the new Constitution of 1891, the fiscal court was the chief local tax raising and appropriating body, but its taxing powers and its power to create debts were limited both by the Constitution and the statutes.[3] The new Constitution handicapped the growth of local government, including the work of the fiscal courts, as it specified that no office might be created whose term was more than a certain number of years, no public officer might receive more than $5,000 annually, salaries could not be changed during the term of office, and county officers had to be a resident of their respective counties. The legislature set up further restrictions by declaring certain offices incompatible with one another and by the establishment of a disciplinary system for the public officers.[4]

There were also the limitations on local government due to the tax and debt creating powers. The primary limitation was that the Constitution placed a debt limit on the counties of 2 per cent of the tax valuation, except for roads where a debt not exceeding 5 per cent of the valuation might be created by a two-thirds vote of the electors.

In 1924, there were only eight of the one hundred and twenty counties with a commission form of government. These counties were Boyd, Campbell, Daviess, Jefferson, Mason, McCracken, Montgomery, and Scott. All the others had a fiscal court consist-

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[1] Ibid., March 24, 1902, chap. 93, secs. 1-2.

[2] Ibid., March 21, 1906, chap. 73, sec. 1.

[3] Efficiency Commission of Kentucky, Report, I, 553.

[4] Ibid., pp. 557-58.

ing of the justices of the peace, elected from districts, together with the county judge [1] The government survey staff of 1924 pointed out that it seemed that the counties with a commission form of government gave greater attention to new and improved methods of administration such as accounting and reporting. A commission form of government also made for a better separation of the judicial and administrative functions, and there was greater emphasis on considering the entire interests of the county.[2]

Again in 1906, the poor law was amended and definite provision was included for the enforcement of the principle of family responsibility. Only adult children were included; any adult resident of the state who had a destitute parent unable to support himself or herself because of old age, illness, or infirmity, but who could provide the parent with shelter, food, care, and clothing, was compelled to do so. If he failed to meet these responsibilities, he was to be given reasonable notice, and if convicted, the offense was a misdemeanor. He could be punished by imprisonment in jail or in the workhouse, and put at hard labor. The sentence was to be not less than one month nor more than six months. However, if after conviction, but before sentence, he entered into bond with surety approved by the court, the sentence could be suspended on the promise that he would furnish the parent with shelter, food, care and clothing.[3]

Several years later, 1928, the question whether or not it was legal to compel children to support their parents was taken up to the Court of Appeals. This was the case of Jesse Gum who died intestate and left his wife, Margaret; two sons, A. M. Gum and W.M.J. Gum; and three daughters, Roxie Wood, Jennie Wax, and Ivie Wheat. He gave some of his land to his sons and the rest to the daughters. The land given to the sons was on the condition that his wife should be supported as long as she was a widow. The two sons divided the land and W.M.J. Gum, with the approval of his mother, sold his share. Prior to the mother's death, A. M. Gum permitted her to have all the produce raised on his land, but the petition filed by Roxie Wood and her husband in the Monroe Circuit Court alleged that this was not sufficient. They claimed that they had taken care of the mother at their own expense, and that

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[1] Ibid., p. 572. [2] Ibid., p. 573.

[3] Acts, March 16, 1906, chap. 31, sec. 1.

the other children had failed to contribute anything.

The upper court agreed with the lower that the only question was whether or not the petition stated a cause for action. The upper court did not think that the act of March 16, 1906 was applicable as it was not the present or future cost of the mother's care which was being sought, but reimbursement for five years of care prior to her death. If support were voluntarily given by one child, notice would have to be given if the delinquent children were to be held liable. Otherwise, the delinquent children might assume that a filial duty was being voluntarily performed without expectation of reimbursement.[1]

Although attention has already been called to a case which went up to the Court of Appeals during this period, there were several other problems of great interest to social workers which were discussed by the courts. For instance, the upper court made it clear, in 1929, that a fiscal court was not obligated to pay for the previous care of a pauper. Alex Delph and his wife, of Clay County, had been caring for Edgar Delph, brother of Alex. Edgar was over thirty years of age, a helpless invalid, and had never owned any property. Alex had cared for Edgar for "quite awhile" by a contract with the fiscal court. In October, 1924, the court refused to enter into a further contract, so that Alex surrendered Edgar, and directed the court to take him off his hands. Later he presented the fiscal court with a bill of seven hundred and thirty dollars for the care of Edgar from October, 1924, to October, 1926, but the court disallowed the claim. His petition was dismissed by the Clay Circuit Court, and the case was taken up to the Court of Appeals.

The upper court held that it would appear from the allegations of the petition that it was the duty of the county to care for the pauper, but how that should be done was a matter resting with the discretion of the court. The fiscal court could not be required to pay Alex Delph for his services, however meritorious, as a moral obligation, his claim for compensation might be. He had a legal remedy when the fiscal court refused to contract with him for the care of Edgar, but he did not invoke it.[2]

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[1] Wood et ux. v. Wheat et al., 226 Kentucky Reports 762 (1928).

[2] Delph v. Clay County et al., 231 Kentucky Reports 589 (1929).

In another case the question was whether or not a county was obligated to support its paupers The upper court held that Hart County was not obligated, but that the county might assume the liability. However, mere promises of members of the county court were not sufficient unless formulated into official action. Both the upper and lower court were in agreement.[1]

It will be recalled that provision for medical care of the poor had been available in the state since the act of December 23, 1803.[2] During the latter part of the nineteenth century, 1867, a case was taken up to the Court of Appeals which involved the cost of medical services for an indigent. Rodman and his partners, physicians in Larue County, filed a petition in the Larue Circuit Court for a mandamus to force the justices of the county court to pay them for the medical services they had given to a poor free negro woman. The court of claims paid one bill for $150 but refused to pay an additional bill of $110.84 because there were insufficient negro pauper funds. The lower court dismissed the petition, but the upper court overruled the lower court and declared it was a legitimate claim.[3]

It will also be recalled that in addition to medical care, the poor had been given free legal services since the act of January 30, 1798.[4] In 1928, an interesting case went up to the Court of Appeals which involved the right of a poor person to obtain free court costs and counsel. Everett Wilson, an employee of the Melcroft Coal Company, Harlan County, had been injured. On September 4, 1928, he asked, as a pauper, for free legal services in order to prosecute his case which had been denied by the workmen's compensation board. The lower court overruled his motion, but the upper court disagreed. The upper court held that the statute providing for free court costs and counsel was general in nature, and it gave the court discretion in granting or refusing the application. It was the duty of the court to waive the costs after Everett Wilson had shown that he was a poor person. It was

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[1] Pleasant Perkins v. Hart County Court, 10 Kentucky Opinions 570 (1878).

[2] See above, p. 6.

[3] Rodman, etc. v. Justices of Larue County, 3 Bush's Reports (Ky.) 145 (1867).

[4] See above, pp. 5-6.

an abuse of the court's discretion to refuse his application.[1]

Lastly, two cases of great interest to social workers should be noted. One involves the use of county funds to give a "Christmas Party," and the other the right to use county funds to defray transportation costs to the National Conference of Social Work. In the first of these cases, 1931, the Court of Appeals was confronted with the problem of whether or not an appropriation of seven hundred and fifty dollars by the Jefferson County Fiscal Court for a Christmas party was a proper provision for the poor. It had been an old custom for the county judge of the juvenile court, the officials, and employees to give a "Juvenile Court Christmas Party" at which clothing, cash, and food were given to the people of the city and county. The Jefferson Circuit Court held the appropriation valid, and the case was taken up to the Court of Appeals to reverse that ruling.

The upper court disagreed with the lower court, and held that the juvenile court was for the treatment of delinquency, and had no power to provide necessities for those under its jurisdiction. An appropriation by the fiscal court for a "Juvenile Court Christmas Party" was not a provision for the poor of the county. If it were sustained, other judges, such as those of the circuit courts, might also give Christmas parties.[2]

In the second of these two cases, the question was whether or not the poor law authorized the fiscal courts to pay the expenses of Robert C. Logan, chief probation officer of the Juvenile Court of Jefferson County, and Solon F. Russell, the County Welfare Director, to the Atlantic City meeting of the National Conference of Social Work in May, 1936. On May 11, 1936, the fiscal court had granted five hundred dollars for their expenses, and while the grant was upheld by the Jefferson Circuit Court, the Court of Appeals disagreed.

The upper court refused to allow the expenses of either the probation officer or the welfare director, but attention will be called only to the comments of the court with reference to the latter officer. The court pointed out that the poor law created

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[1] Wilson v. Melcroft Coal Company et al., 226 Kentucky Reports 744 (1928).

[2] Bruner v. Jefferson County Fiscal Court, 239 Kentucky Reports 613 (1931).

no county welfare office, but merely authorized the fiscal court to appropriate county funds for the care of the poor, employ a person to keep the accounts and records of the county and make audits. By no stretch of the imagination could the poor law be construed to authorize the fiscal court to use county funds for participation in a conference at a distant point. The only instance where such expenses might have been allowed would have been in the discharge of official duties.[1]

It is important that some attention be given now to outdoor relief as it developed under the poor law. In 1924, there were two prevailing public attitudes towards the poor. On the one hand, the pauper was regarded as a public nuisance to be taken care of in the most economical way, while on the other hand, the pauper prompted the use of county funds based on the friendship of a county official.[2]

Poor relief, in 1924, was financed in a number of ways. In Ballard and Morgan Counties the poor were let out to the highest bidder. The fiscal court of Larue County "hired out" the poor, while in other instances, a monthly per capita grant for each inmate was made to the poorhouse keeper. Relief outside the poorhouse was controlled by the magistrates. Perhaps the most constructive plan was that in Floyd County where the poor persons were placed with relatives at one hundred dollars a year.[3]

In the spring of 1931, a study was made of the relief situation in three Kentucky counties. These counties were those in which unemployment had been reported to be very serious and the relief as inadequate.[4] The county poor relief funds had been used for the support of the aged, blind, and chronically sick, but they were inadequate even for that. The usual payment was ten to fifteen dollars a quarter. In spite of the great increase in

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[1] Jefferson County ex rel. Grauman, Co. Atty., et al. v. Jefferson County Fiscal Court, 269 Kentucky Reports 768 (1937).

[2] Efficiency Commission of Kentucky, Report, I, 606-607.

[3] Ibid., p. 607.

[4] Grace Abbott, "Improvement in Rural Public Relief: The Lesson of the Coal Mining Communities," Social Service Review, VI (June, 1932), 185. This was a report of a study which was made by the United States Children's Bureau at the request of the President's Emergency Committee for Employment.

need, local expenditures for poor relief had remained nearly constant. However, this was largely due to the lack of resources and the impossibility of meeting local needs by local taxation.[1]

On January 1, 1931, when the National Red Cross made plans to aid the drought sufferers, it was believed that at least five hundred families in one Kentucky county were in need of assistance. When a relief program was established in this county which had a population of 42,000, applications for aid were received from 3,200 families representing 19,000 individuals. People came to the relief headquarters in "flocks and droves," some of them walked miles carrying small children in their arms.[2] Between January 10 and May 15, 1931, the National Red Cross spent sixty thousand dollars in this one county. Although this aid was primarily for the drought victims, no accurate statement could be obtained as to the extent of suffering among the children of unemployed miners. However, some of these families were reported to be living on "bread and water gravy"; medical services were not available for confinement cases; children were out of school because they lacked clothing; and serious undernourishment existed among the school children.[3]

The other two counties visited in the course of this study showed variations of the conditions to which attention has already been called.[4] In one of these counties, the county had expended seven thousand dollars from January 1, to May 13, 1931, which was less than two dollars per week per family. The "chronic paupers" were given five dollars to fifteen dollars a month and the unemployed received one dollar and a half to three dollars, but the applicant had to reapply for each order.

In the third county, the county and the Red Cross had carried the relief burden during the winter of 1930-1931. On January 1, 1931, a public appeal was made for funds. A committee of miners from two towns first brought the acute relief situation to the attention of the county judge. The latter was much distressed, but the county had no funds, so that the judge suggested that the miners form a parade and march on the court house where a collection was taken up. The collection amounted to twenty dollars and a local grocer agreed to contribute sufficient supplementary food

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[1] Ibid., p. 205.
[2] Ibid., p. 206.
[3] Ibid., p. 208.
[4] Ibid., p. 210.

to meet immediate needs. Twenty-five men admitted that there was no food in their homes, but when baskets were prepared, fifty people applied for them, so that the food intended for twenty-five families had to be divided among fifty. Later, the county judge sent trucks through the county to gather contributions of food and clothing.[1]

These conditions clearly indicated that the local relief resources were inadequate, and that public assistance should be provided by the state.[2] The public welfare program of Kentucky was much less developed than those of other states, and the central welfare authority was not in a position to supply the necessary leadership. The state needed to provide equalization funds if it were to reach a reasonably high standard for its social services.[3] The relief crisis in the early thirties of the twentieth century was largely due to the fact that an effort was being made to meet modern social and industrial conditions with a system of poor relief which had been little modified since Colonial times.[4]

In 1933, another authority revealed that at least 35 per cent of the school children in forty-one counties of Illinois, Kentucky, Maryland, Pennsylvania, Tennessee, and West Virginia were receiving food, in 1932, from the American Friends Service Committee.[5] The basis for giving the food was a 10 per cent underweight condition or health signs which indicated the need for feeding. About $394,602 was spent of which $225,000 was received from the American Relief Administration. Even in 1933, about eleven or twelve thousand children in sixteen counties of Kentucky and West Virginia were being given food by this same organization. The percentage of children receiving food had increased from 35 per cent in 1932 to 51 per cent in 1933, and the clothing situation had become increasingly worse.

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[1] Ibid., pp. 215-16.

[2] Ibid., p. 219.

[3] Ibid., p. 221.

[4] Ibid., p. 222.

[5] Testimony of Clarence E. Pickett on Federal Aid for Unemployment Relief. Hearings Before a Subcommittee of the Committee on Manufacturers, United States Senate, 74th Cong., 2d Sess., on S. 5125, A Bill to Provide for Co-operation by the Federal Government with the Several States in Relieving the Hardships and Suffering Caused by Unemployment and for other Purposes, January 3-17, 1933 (Washington: Government Printing Service, 1933), p. 420.

It was important to note that three schools in Kentucky had closed in 1933 because of trachoma. In some cases, sight had been restored for these children within three weeks by giving them butter,[1] but there were many cases of blindness among the school children. The grants made by the Reconstruction Finance Corporation had been entirely inadequate, and had averaged not more than one dollar a week per family.

Two years later, August, 1935, another study was made of outdoor relief. This study included the year 1933 and the first six months of 1934 for all the counties except Boyd and Ballard, but the results were only estimates as the county records were in such chaos.[2] It was impossible to learn the extent or amount of poor relief. In many counties, no books were kept, and the only evidence of relief expenditures consisted of receipted bills and warrants. Even the latter did not indicate what was purchased, only the local merchants could throw any light on that problem.

Outdoor relief consisted of "allowances," "cash relief," and "commodity relief. " Poor relief included the allowances to the aged, blind, and idiots; maintenance of poorhouses; pauper contracts; burials; subsidies to state institutions; medical supplies; hospital care and school books. However, this study treated outdoor relief as exclusive of the allowances to special groups and for special purposes. Of the 117 counties included in the study, twenty-nine made no grants for outdoor relief in 1933. Of the eighty-eight counties providing relief, thirty-eight used cash relief, twenty-eight used commodities, and twenty-two used both commodities and cash relief. For the first six months of 1934, no outdoor relief was granted in forty-two counties. Of the seventy-five counties granting outdoor relief, only fifty-five had any records of the families aided. It was difficult to believe that in those counties where only cash relief was given, the average grant was only nineteen dollars for the first six months of 1934. In those counties where commodities were used, the average grant was twenty-eight dollars, but no estimate could be made

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[1] Ibid., p. 422.

[2] Mrs. Robert I. Kutak, "Facilities for the Care of Dependent Families in Kentucky" (Kentucky Emergency Relief Administration, Louisville, 1935), p. 22. (Mimeographed.)

for those counties giving cash relief and commodities.[1]

The relief of pauper negroes and mulattoes.--One of the poor shortly after the Civil War, between 1866 and 1871, was the provision for pauper negroes and mulattoes. By an act of 1866 all taxes collected from negroes and mulattoes, including a two dollar tax on every male over eighteen years of age, were to constitute a fund, half of which was to be used for their education and half for the care of their paupers.[2] The trustees of the school districts were to establish a separate school for negro and mulatto children for which they were to receive their share of this newly created fund.[3] As to the negro and mulatto paupers, the county courts were to certify the number to the auditor of public accounts who could proceed to give the counties their proportionate share of the fund based upon the number of negro or mulatto paupers in each county.[4]

In the following year, 1867, the act was amended. After two dollars and fifty cents had been granted to the county school commission for each negro student who had attended school for three months or longer,[5] the remainder was to be used as a pauper fund. The responsibility for the latter fund was vested in the county courts, and the courts of claims were to make an annual audit.[6]

However, the act of 1866 was amended again in 1868, so that only the remainder of the fund was to be used for school purposes after provision had been made for the pauper negroes and mulattoes.[7] But in 1871, the act of March 9, 1867, was repealed. Henceforth the negroes and mulattoes were to pay the same per capita taxes and the same rates on real and personal property as the whites, except with reference to the taxes for common school pur-

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[1] Ibid., p. 23.

[2] Acts, February 16, 1866, chap. 636, secs. 1-2.

[3] Ibid., sec. 4.

[4] Ibid., secs. 5, 7.

[5] Ibid., March 9, 1867, Vol. I, chap. 1913, sec. 6.

[6] Ibid., sec. 7.

[7] Ibid., January 9, 1868, Vol. I, chap. 56, sec. 1.

poses.[1]

The Court of Appeals, in 1873, was asked to pass upon the legality of a claim for the care of a negro pauper under the act of March 9, 1867, which had been repealed. A man by the name of Featherstone had been allowed fifty dollars a year for the care of Lucy Branham, a negro pauper in Franklin County, for the years 1868 to 1870, but he was paid only forty dollars of the one hundred and fifty dollars. In order to collect the remaining one hundred and ten dollars he brought a mandamus action against the judge and justices of the Franklin County Court of Claims to compel them to levy a tax sufficient to meet this debt. Although the lower court, the Franklin Circuit Court, dismissed the petition, the upper court did not agree. The Court of Claims maintained that the allowance for the care of Lucy Branham for the three years was to be paid out of the funds obtained from the negro property and poll taxes. However, the funds collected for the three years 1868-1870 were not adequate; therefore the claims were pro rated.

The upper court held that before the act of March 9, 1871 was passed, Featherstone's claim had been allowed, and the unpaid part was a debt against the county. It was the duty of the court of claims to use all possible means to raise money to discharge the debt. The act of February 9, 1871 placed the same per capita tax and the same real and personal property tax (except for common schools) on negroes and mulattoes as on whites. It repealed the act of March 9, 1867, and the responsibilities of counties for the care of negro paupers were therefore enlarged.[2]

During this period, 1866-1871, some special plans were made by the legislature for the care of destitute negroes and mulattoes in Fayette and Mercer Counties. In 1868, the county judge of Fayette County was authorized to make orders on the negro tax funds for their support because of infancy, old age, or sickness. The recipients had to be residents of Fayette County for twelve months, and no grant could exceed ten dollars at a time.[3] The judge was to appoint someone to receive the money from the county

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[1] Ibid., February 9, 1871, Vol. I, chap. 1233, sec. 2.

[2] Featherstone v. Thompson, 10 Bush's Reports (Ky.) 140 (1873).

[3] Acts, February 5, 1868, Vol. I, chap. 346, sec. 1.

treasury which was to be spent for absolute necessaries. This person was not to receive a salary, but he was to make a detailed statement of his expenditures.[1] One half of the funds was to be appropriated by the judge for the paupers of Lexington, and the other half for those outside the city.[2]

In 1871, the County Court of Mercer County was empowered to appoint a superintendent to care for, manage, and control the negro paupers. All colored persons who were residents of Mercer County, who had not been brought there to become a public charge, who owned no property, who could not labor for their support, and whose parents could not aid them, were said to be paupers.[3] The superintendant was to give them proper maintenance and provide medical and burial services.[4] He could make contracts for their care at not more than sixty-five dollars a year and allow not more than ten dollars for burial expenses.[5] The "negro pauper funds" were to be used first for the payment of contracts of hire,[6] but the superintendent could contract out only those for whom an order had been given by the county court or by the county judge in vacation. The superintendent was to make an annual report of his activities to the county court showing the amount of money collected and disbursed, and he was also to indicate from whom the money had been received, to whom paid, the total number of paupers, their names, and their contracts.[7] He was to be bonded with good security for the faithful performance of his work, and a reasonable compensation might be paid him by the county court.[8]

Drought, flood, and cyclone relief.--During the early part of the 1880's, particularly in 1881 and 1882, the counties had difficulty in taking care of the poor because of drought conditions. Provision was made in 1882 for the Hart County Court to borrow not more than three thousand dollars for the care of the poor and destitute of the county.[9] The rate of interest was not

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[1] Ibid., sec. 2. [2] Ibid., sec. 3.

[3] Ibid., February 22, 1871, Vol. I, chap. 1340, sec. 7.

[4] Ibid., secs. 1-2. [5] Ibid., sec. 3.

[6] Ibid., sec. 6. [7] Ibid., sec. 8.

[8] Ibid., sec. 9.

[9] Ibid., February 23, 1882, Vol. I, chap. 250, sec. 1.

to exceed 6 per cent per year, and the court was to issue bonds for the borrowed money.[1]

This act was amended in the same year, 1882, so that the county judge could appoint a person to see that only the really needy received relief, and the need was to be verified by two disinterested neighbors.[2] The supplies distributed under this act were to be purchased at wholesale, and the county court was to designate one or two places in the county from which they were to be distributed. The judge was to indicate the days of distribution, but not more than three days a week at one place were to be set aside for this purpose.[3]

Although the provisions were to be purchased at wholesale, a discreet person appointed by the judge of the county court was to make the purchases and keep an accurate record of the amount of relief distributed, as well as the names of the recipients. He was to receive a reasonable compensation for his services and be bonded by the court to carry out the provisions of this act.[4]

It should be pointed out that this act did not provide for an outright grant of supplies, but that they were distributed on a loan basis, and the loan was to be paid off in two years at 6 per cent interest per year. Those who received assistance did not have to be indigents, but all were included who could not obtain assistance to put in a crop for the year 1882. Those who were aided were to give their notes to the Hart County Court,[5] and the court could determine the delinquents when the notes fell due.[6]

In 1882, the Adair County Court was empowered to borrow two thousand five hundred dollars to purchase provisions for the destitute within the county. The court was vested with the distribution of the relief and the issue of obligations for the borrowed sums.[7] The county judge was to call the members of the court together to make plans for borrowing the money after he had received a petition from the citizens.[8]

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[1] Ibid., secs. 2-3.

[2] Ibid., March 24, 1882, Vol. I, chap. 556, sec. 1.

[3] Ibid., sec. 2.

[4] Ibid., secs. 3, 5.

[5] Ibid., sec. 6.

[6] Ibid., sec. 7.

[7] Ibid., March 9, 1882, Vol. I, chap. 405, sec. 1.

[8] Ibid., sec. 3.

Similar provision was made in 1882 for Metcalfe and Monroe Counties except that the judge, without a petition, could call the county court together to determine whether or not funds should be borrowed.[1]

In the same year, 1882, the Mercer County Court was authorized to make an additional ad valorem tax of not more than six cents on each one hundred dollars worth of taxable property. This tax was to be used to relieve the destitute poor resulting from the drought in 1881.[2]

In 1886, the legislature gave retroactive approval of a ten cent levy on each one hundred dollars worth of taxable property for the support of the Daviess County paupers in 1884 and 1885.[3] On the same day the county court of claims was authorized to levy an ad valorem tax of not more than seven cents on each one hundred dollars worth of taxable property. This latter tax was for the future support of the paupers, and might continue indefinitely.[4]

In the 1880's and 90's, some interesting state and county provisions were made for the care of flood and cyclone sufferers. In order to aid the flood sufferers of 1884, the governor and auditor were authorized by a legislative resolution to use not more than twenty-five thousand dollars in any way they thought best, but they were to report where, how, and how much of the funds were used, together with the names of the recipients.[5] Later this relief fund was increased to seventy-five thousand dollars for the purchase of provisions, fuel, and other necessaries. The governor and auditor were to use local relief boards to carry out the resolution. They were to appoint commissioners to aid them in obtaining information and in the distribution of the funds. No one was to receive any compensation for his or her services, and each commissioner and chairman or clerk of the committees was to file the relief vouchers with the auditor of the state.[6]

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[1] Ibid., March 23, 1882, Vol. I, chap. 547, secs. 1, 3.

[2] Ibid., February 27, 1882, Vol. I, chap. 294, sec. 1.

[3] Ibid., March 24, 1886, Vol. I, chap. 416, sec. 1.

[4] Ibid., chap. 420, sec. 1.

[5] Ibid., February 13, 1884, Vol. I, Res. No. 18.

[6] Ibid., February 18, 1884, Vol. I, Res. No. 19.

The Auditor of Public Accounts was appointed in 1890 to relieve the tornado sufferers in the towns of Clinton, Lawes, and Wickliffe. The total relief for provisions, fuel, medicine, medical attention, and shelter was not to exceed ten thousand dollars. The governor and auditor were to appoint local relief boards for each of the towns, and use only the money which was necessary. No one was to receive any compensation, and each was required to file a voucher with the auditor showing the disposition of the money distributed by him. Anyone who misappropriated funds, or refused to account for money expended, was guilty of a high misdemeanor.[1]

Later, by another legislative resolution, the relief funds were increased to thirty thousand dollars, and arrangements were made for the appointment of additional relief boards in the cities, towns, and counties affected.[2]

The great tornado of March 27, 1890 has been described by a resident of Louisville as being very destructive. Most of the relief work in that city was carried out by the Board of Trade Relief Committee, several subcommittees, and a corps of clerks. Members of the staff of the Louisville Charity Organization Society were used as investigators, but they were aided by volunteers. Only orders, not money, were given for necessaries, and it was thought that this plan prevented much fraud. In Louisville, the total relief was $156,045.76 of which $5,000 was appropriated by the legislature, $20,000 was appropriated by the city council, $15,547.05 was raised by subscription outside the state, and $115,498.71 was raised by the citizens of Louisville.[3]

Subsidies to private charities.--Subsidies are given brief attention in this study only because their use was so widespread in all levels of government, state, county, and municipal. The principle that public money should be spent by public agencies has never been fully accepted in Kentucky.

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[1] Ibid., January 15, 1890, Vol. I, Res. No. 7.

[2] Ibid., April 4, 1890, Vol. I, Res. No. 41.

[3] W. T. Rolph, "The Great Tornado," Proceedings of the National Conference of Charities and Corrections, 1890, pp. 49-57.

The Kentucky Children's Home Society might be used as an example of an institution which has been subsidized for years by state funds. As early as 1908, a social welfare student called attention to the fact that the legislature had increased the annual subsidy of the institution from fifteen thousand to thirty thousand dollars. In the same year, the legislature also provided that any sanatorium established by private funds, if it were not operated for profit, might receive annually a sum equal to 20 per cent of the amount actually expended in establishing and equipping the institution, but no sanatorium was to receive more than three hundred and fifty dollars a year for each bed maintained. However, the only sanatorium in the state which was established by private funds was in Jefferson County. This act was designed to meet the deficit of that institution.[1]

As early as the fall of 1917, the subsidy system in Lexington was studied extensively because the amount of the subsidies had reached the alarming total of forty thousand dollars a year.[2] The city did not have either a well developed public welfare department or effective privately supported agencies. However, it is only fair to say that the Lexington relief problems largely grew out of a lack of leadership on the part of the public officials. The Associated Charities, founded on February 14, 1901, owed its organization directly to the solicitation of the city officials. It came into existence as a response made by generous individuals to a cry of despair which had been uttered by the mayor in distress.[3] There was no question but that some of the members of the board of the private society were thoroughly familiar with the professional standards of social work services of that period.[4]

In 1917, the subsidized agencies in Lexington included three institutions for dependent children, an old ladies' home,

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[1]Bernard Flexner, "Social Legislation in Kentucky," Charities, XX (August 1, 1908), 534-36.

[2]This study was made by Margaret F. Byington for the American Association for Organizing Charity, but the original report was not obtainable.

[3]Sophonisba P. Breckinridge, Madeline McDowell Breckinridge (Chicago: The University of Chicago Press, 1921), p. 156.

[4]Ibid., pp. 162-81.

the House of Mercy for delinquent girls, an industrial school maintaining classes in sewing, cooking, and chair-caning, a city missionary society, the Associated Charities, and the Public Health Nursing Association. Only the latter two organizations had trained workers, and they were handicapped by a lack of funds. The subsidies made for bad conditions as many agencies did nothing to raise additional funds so that they might do satisfactory work. In other cases, board members had made personal contributions to supplement the subsidies. The city government had no control over the subsidized agencies, and since so little money was raised privately, the citizens were not aware of the social problems. Perhaps the worst feature was that when the city delegated its welfare responsibilities to the private agencies, it never had to face the results of its own program.[1]

When a comprehensive study of the state government was made in 1924, it was pointed out that while the state welfare authority could inquire into the operation of the charitable agencies which received state financial grants, it did not have the facilities or the time to investigate these agencies. The survey staff recommended that the name of the authority be changed to a "Board of Public Welfare" and that its jurisdiction be extended to include the Kentucky Children's Home Society, the Children's Home Society for Colored Children, the Home for Incurables, and the Kentucky Confederate Home. Placement of these institutions under the state authority would enable it to deal with the social welfare problems as a whole.[2]

Two cases which went up to the Court of Appeals in 1927 were helpful in understanding the acceptance of a subsidy system. On July 6, 1926, the fiscal court of Mercer County appropriated one hundred and fifty dollars a month for the support of the A. D. Price Hospital in Harrodsburg. The Mercer Circuit Court and the Court of Appeals were in agreement that the appropriation was valid. The upper court relied upon a leading case,[3] and said that nothing was more desirable in a community than a well equipped

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[1] "The Subsidy System in a Small Town," The Survey, XL (May 11, 1918), 164.

[2] Efficiency Commission of Kentucky, Report, II, 104-105.

[3] Orphan Society of Lexington v. Fayette County, 6 Bush's Reports (Ky.) 413 (1869). See below, pp. 144-45.

hospital. It was objected that this was a lump sum grant and its expenditure had been left to the discretion of others, but the upper court held that the fiscal courts were authorized to make appropriations to infirmaries and hospitals, and the fact that the money was used by others was no objection to the exercise of this power. The discretion of the fiscal court would not be interfered with by the upper court unless the former acted corruptly or in bad faith.[1]

The other case was one which involved the validity of a grant of two thousand dollars by the Jefferson County Fiscal Court to the Louisville Community Chest. The original request had been for ten thousand dollars but the fiscal court granted only two thousand dollars and the sums apportionable to each agency of the chest were cut down accordingly. Both the Jefferson Circuit Court and the Court of Appeals were in agreement as to the validity of the grant. The upper court called attention to an earlier case,[2] indicating that the principles involved were the same, and that there was no question about the power of the fiscal court to make the grant. The appropriation was made for public purposes and in the exercise of the authority conferred on the fiscal court by statute. The powers of the latter made no distinction between the city and county. Neither did it make any difference that some of the agencies were private and some were public.[3]

The 1934 audit and survey of the Department of Public Welfare pointed out that the state gave large subsidies to the Kentucky Children's Home Society and the Children's Home Society for Colored Children. In 1932-1933, the state gave eighty thousand dollars to the former and twenty-five thousand dollars to the latter, apparently because they were performing a state function, but the state had no voice in their management nor in determining how the funds were to be spent.[4]

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[1]Robinson, et al. v. Mercer Fiscal Court, et al., 218 Kentucky Reports 452 (1927).

[2]Orphan Society of Lexington v. Fayette County, 6 Bush's Reports (Ky.) 413 (1869). See below, pp. 144-45.

[3]Jefferson County v. Jefferson County Fiscal Court, 220 Kentucky Reports 678 (1927).

[4]Griffenhagen and Associates, "Report of Audit and Survey of the Department of Public Welfare" (Griffenhagen and Associates, Chicago, 1934), chap. iii, p. 5. (Mimeographed.)

In 1935, when an exhaustive study was made of outdoor and indoor relief, it was learned that in 1934 eight of the largest cities and towns had granted subsidies to the private welfare societies. The total appropriation for 1934 amounted to $86,693.49, but the largest part of this, $79,000, was given to the Family Service Organization of Louisville. The remainder was granted by six other cities to their private family welfare societies.[1]

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[1]Kutak, op. cit., p. 24.

CHAPTER III

COUNTY POORHOUSE CARE

In this discussion of county poorhouses, it is significant that the problem of confusion between the county and municipal authorities, such as was found in the New England States, was never a problem in Kentucky. As in the case of outdoor relief, the county, rather than the city, was always the primary local unit of government which was authorized to care for the poor.

To understand the use of poorhouse care in Kentucky, it should be noted that both poorhouses and workhouses had existed in Virginia since 1755, and that by 1772 at least six had been built.[1] These institutions were at first under the control of the vestries, and not the courts, but the Virginia act of 1787 had authorized the corporation courts of the towns to build poorhouses,[2] and this power was extended to the county authorities in 1792.[3] This legislation was in effect in Kentucky until 1793 but no action was taken under it, and in 1793 the Kentucky legislature repealed all the acts concerning the poor which had been in force prior to that date.[4] However, it was not until twenty-eight years later, or 1821, that the county courts were given specific authority to provide poorhouses. By this act the county courts might purchase not more than two hundred acres of land upon which to build a poorhouse, and make a levy to cover the costs of the land,

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[1]Harriet L. Tynes, "The History of Poor Relief Legislation in Virginia, 1776-1930" (Unpublished Master's dissertation, School of Social Service Administration, University of Chicago, 1932), p. 48.

[2]Hening's Statutes at Large, Being a Collection of All the Laws of Virginia, 1787, Vol. XII, chap. 48, sec. 14.

[3]Tynes, op. cit., p. 48.

[4]Littell's Laws, December 19, 1793, Vol. I, chap. 118, sec. 1.

buildings, and repairs.[1] A fit person was to be appointed as superintendent with a reasonable compensation, and he could compel the able-bodied poor to work on the farm.[2] He could also be removed by the court for just cause.[3] The court was to make all the rules and regulations concerning the government of the poorhouse, the purchase of raw materials, and the disposal of the products. If a poorhouse were built, the court was to appoint someone, other than the superintendent, to receive the money levied in the county for the care of those in the poorhouse. A reasonable salary was to be allowed this person, and he was to give bond and security for the faithful fulfillment of his duties.

When the statutes were revised in 1852, the county courts, which then included the presiding judge and justices,[4] were given the same authority to purchase two hundred acres for a poorfarm and in addition were authorized to include contracts for furniture, implements, and other necessary property. The courts could levy for funds to defray the cost of the land, the improvements and repairs, the support of the poor, and the salary of the superintendent and other officers of the institution. The appointment, duties, and tenure of the superintendent and receiver were practically the same as described by the act of 1821 except that it was definitely stipulated that both were to hold office at the pleasure of the court, and the receiver was to make an annual report of his receipts and disbursements to the court.[5]

Another important change made by the act of 1852 related to the admissions to the poorhouse. Henceforth the admissions were to be made by the county court in term time, or by the presiding judge in vacation, but since the judge constituted the county court except at the October term, this meant that the admissions were by the judge. Beggars were to be placed in the poorhouse by a warrant of the presiding judge, and if the beggar were a male and able to work, he was to be proceeded against under the vagrancy laws.[6]

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[1] Acts, December 19, 1821, chap. 309, sec. 1.

[2] Ibid., sec. 3. [3] Ibid., sec. 6.

[4] See above, p. 11.

[5] Acts, January 7, 1852, chap. 358, chap. xxi, secs. 2-3.

[6] Ibid., sec. 4. It is also important to keep in mind the

After the adoption of the third Constitution in 1850, and the subsequent revision of the statutes, no further changes were made in regard to poorhouse care until 1864 when an act provided that it was no longer necessary for the county courts to appoint both superintendents and receivers of poorhouses; one person could handle both positions.[1]

In 1873, when the general statutes were issued, the provision for poorhouse care was practically the same as in the act of 1852 except that, although the county courts were given authority to purchase land for a poorhouse, nothing was said about a specific amount such as two hundred acres as described by the act of 1852. Perhaps the most important change was that the court of claims (the October meeting of the county court) was authorized to sell, dispose, and convey title to the poorhouse lands and buildings. It could also invest the proceeds in new lands and buildings.[2] This meant that many of the poorhouse problems of specific counties which had been handled by the legislature prior to 1873[3] were then transferred to the court of claims. Lastly, the county courts were to prescribe just and humane rules for the government of those in the poorhouse.[4]

After 1873 there were no further changes with reference to the poorhouse other than the creation of the fiscal courts by the Constitution of 1891 and the subsequent acts of 1892.[5] The fiscal courts were given the same responsibility for the care of

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constitutional and statutory changes which were made in the early 1850's with reference to the county courts. It will be recalled that prior to 1851 the county courts consisted of the justices of the peace, and there was no county judge. After 1851, the county court was composed of the county judge, except at the October term which was known as the court of claims, when the justices of the peace sat with the judge, and he and they constituted the county court for settling claims against the county, making provision for the poor, making appropriations, and levying the necessary taxes. The county court consisting of the judge alone exercised the power to declare one a pauper or to consign a pauper to the poorhouse. See above,

[1] Acts, January 8, 1864, chap. 58, sec. 1.

[2] General Statutes, 1873, chap. 86, sec. 5.

[3] See below, pp. 38-44.

[4] General Statutes, 1873, chap. 86, sec. 11.

[5] See above, pp. 13-15.

the poor as that which had formerly belonged to the court of claims between 1851 and 1891. However, this responsibility was modified slightly by the acts of 1902, 1906, and 1920.[1]

During the nineteenth century, particularly prior to 1873 when the courts of claims were empowered to sell, dispose, and convey title to the poorhouse lands and buildings, as well as invest the proceeds in new lands and buildings, there were many acts which gave additional authority to the county courts to meet their poorhouse problems in specific counties.[2] The greatest number of these subsequent acts made provision for the county courts to sell the present poorfarm so that a new one could be bought. The reason for selling the sites varied, such as, because the present site was inaccessible, or because the land was poor and unproductive. In other instances, such as in Barren County, the poorfarm was sold because of health problems, while in some cases, such as Spencer or Jessamine Counties, the object of the sale was to reduce the county levy. In one case, Hardin County, additional land was needed beyond the two hundred acres allowed by the act of 1821, but in many cases, such as Shelby or Oldham Counties, it was not possible to learn why the poorfarm was being sold. Other problems related to the legality of the poorfarm sales, such as in Marion or Campbell Counties, or problems of obtaining funds to purchase the poorfarm and construct the buildings as in Harrison or Webster Counties. Lastly there were problems, as in Nicholas County, with reference to obtaining funds for the support of those in the poorhouse.

In these first instances which constituted the bulk of the specific acts, the sale of the poorfarm was authorized primarily for the purchase of a better site. For example, taking the acts chronologically: The County Court of Fleming County was authorized to sell the poorhouse land in 1861, convey the title to the purchaser through a commissioner, and use the funds to purchase a new poorfarm.[3]

The poorhouse in Woodford County had become a great expense and was inadequate for its purpose; therefore, in 1866, the

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[1] See above, pp. 15-16.

[2] For citations to these acts, see below, pp. 39-44.

[3] Acts, January 25, 1861, chap. 5, sec. 1.

county court was empowered to sell the land and buildings. The sale, after having been advertised in at least three public places, was to take place on a court day at the court house door in Versailles.[1]

The County Court of Logan County was to sell its poorhouse in 1867, and use the funds thus obtained for the purchase of more suitable property. If the proceeds from the sale were not adequate, the county court might levy an ad valorem tax of not more than five cents on each one hundred dollars worth of taxable property.[2]

Similar authorization to change their county poorfarms was made for many other county courts including those in Hardin,[2] in 1835; Garrard,[4] in 1836; Bourbon,[5] in 1841; Barren,[6] in 1848; Pulaski,[7] in 1854; Madison[8] and Harrison,[9] in 1856; Nicholas,[10] in 1858; Montgomery,[11] Calloway,[12] and Campbell,[13] in 1860; Henry[14] and Boone,[15] in 1861; Monroe,[16] in 1864; Carter,[17] in

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[1] Ibid., February 16, 1866, chap. 667, secs. 1-2.

[2] Ibid., March 8, 1867, Vol. II, chap. 1809, secs. 1-2.

[3] Ibid., February 23, 1835, chap. 766.

[4] Ibid., December 16, 1836, chap. 5, secs. 1-2.

[5] Ibid., January 4, 1841, chap. 49, secs. 1-2.

[6] Ibid., January 15, 1848, chap. 49, sec. 2.

[7] Ibid., March 7, 1854, Vol. II, chap. 572.

[8] Ibid., February 9, 1856, Vol. I, chap. 122, secs. 1-2.

[9] Ibid., March 10, 1856, Vol. II, chap. 810.

[10] Ibid., February 15, 1858, Vol. II, chap. 585.

[11] Ibid., February 18, 1860, Vol. I, chap. 302.

[12] Ibid., February 25, 1860, Vol. II, chap. 599, secs. 1-2.

[13] Ibid., February 28, 1860, Vol. II, chap. 781, secs. 1-3.

[14] Ibid., February 7, 1861, chap. 99, sec. 1.

[15] Ibid., chap. 98, secs. 1-2.

[16] Ibid., February 15, 1864, chap. 345, secs. 1-2.

[17] Ibid., February 9, 1866, chap. 464, secs. 1-2.

1866; Bracken,[1] Kenton,[2] Franklin,[3] and Trimble,[4] in 1867; Jessamine[5] and Washington,[6] in 1868; Graves,[7] Mason,[8] and Ballard,[9] in 1869; Estill[10] and Anderson,[11] in 1870; Boyle[12] and Clark,[13] in 1871; Lincoln[14] and Trigg,[15] in 1872; Pendeleton,[16] Webster,[17] Grant,[18] and Ohio,[19] in 1873; Owen,[20] in 1876; and Crittenden[21] Counties, in 1884.

There was one instance in which the poorhouse land and buildings were sold because of health reasons. In 1846, the health and lives of the paupers in Barren County were endangered. The county court was authorized to appoint a commissioner to make the sale of the poorhouse, empower him to accept bonds or money,

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[1] Ibid., January 18, 1867, Vol. I, chap. 1038, secs. 1-2.

[2] Ibid., February 27, 1867, Vol. II, chap. 1508, secs. 1-3.

[3] Ibid., February 28, 1867, Vol. II, chap. 1556, secs. 1-3.

[4] Ibid., chap. 1593, secs. 1-3.

[5] Ibid., February 7, 1868, Vol. I, chap. 375, secs. 1-2.

[6] Ibid., March 7, 1868, Vol. II, chap. 915, sec. 1.

[7] Ibid., January 26, 1869, Vol. I, chap. 1306, secs. 1-3.

[8] Ibid., March 9, 1869, Vol. II, chap. 1822, secs. 1-3.

[9] Ibid., chap. 1823, secs. 1-3.

[10] Ibid., January 19, 1870, Vol. I, chap. 77, secs. 1-3.

[11] Ibid., January 26, 1870, Vol. I, chap. 167, secs. 1-3.

[12] Ibid., March 14, 1871, Vol. II, chap. 1565, secs. 1-2.

[13] Ibid., March 18, 1871, Vol. II, chap. 1667, secs. 1-3.

[14] Ibid., February 8, 1872, Vol. I, chap. 232, secs. 1-2.

[15] Ibid., March 28, 1872, Vol. II, chap. 956, secs. 1-2.

[16] Ibid., January 31, 1873, Vol. I, chap. 52, secs. 1-3.

[17] Ibid., March 19, 1873, Vol. I, chap. 415, secs. 1-3.

[18] Ibid., chap. 439, secs. 1-3.

[19] Ibid., March 25, 1873, Vol. II, chap. 546, secs. 1-3.

[20] Ibid., March 8, 1876, Vol. II, chap. 515, secs. 1-3.

[21] Ibid., February 5, 1884, Vol. I, chap. 106, secs. 1-2.

make a conveyance to the purchaser, and retain a lien for the payment of the purchase price.[1] The money was to be used to reduce the county levy. The county court could purchase another tract of land, not exceeding two hundred acres, and erect a new poorhouse.[2]

There were a few examples in which the poorhouse land was sold in order to obtain funds to reduce the county levy. For instance: In 1837, a commission of four members was appointed by the County Court of Spencer County to sell the poorfarm and tenements to the highest bidder, after advertising the sale on the court house door for two weeks. The proceeds were to be used to lessen the county levy.[3]

The County Courts of Jessamine, Woodford, Warren, and Mercer Counties were also permitted to sell their poorfarms and use the funds to buy more appropriate lands, decrease the county levy, or for any other purpose which would promote the welfare of the counties.[4]

In one county the two hundred acres of land allowed by the act of 1821 was not adequate, and permission was given the county court to purchase additional land. In 1833, the legislature empowered the County Court of Hardin County to purchase another hundred acres of land adjoining the two hundred acres which it already had.[5]

In many cases it was not possible to determine why the sale of the poorhouse land was authorized, but the legislature simply gave permission to the county courts to make the sale. For example: The County Court of Spencer County was authorized in 1851 to sell or dispose of any part of its poorhouse land.[6] Similar sales were authorized in Shelby,[7] in 1851; Oldham,[8] in 1854;

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[1] Ibid., January 14, 1846, chap. 13, sec. 1.

[2] Ibid., secs. 2, 4.

[3] Ibid., February 13, 1837, chap. 280, secs. 1-2.

[4] Ibid., February 29, 1836, chap. 383, secs. 1-3.

[5] Ibid., January 14, 1833, chap. 70.

[6] Ibid., February 1, 1851, Vol. II, chap. 197.

[7] Ibid., February 15, 1851, Vol. II, chap. 259.

[8] Ibid., March 8, 1854, Vol. II, chap. 669, secs. 1-2.

Larue,[1] in 1856; Carter,[2] Green,[3] and Warren,[4] in 1860; and Butler[5] Counties, in 1868.

There were a few instances in which the county court had sold the poorhouse land, but later there seemed to be some question concerning the legality of the sale. In order to remedy these situations, the legislature made special provision for specific counties. For instance: The County Court of Marion County, in 1856, was authorized to ratify the sale of its poorhouse and farm to Arnold Jarboe, and appoint a commissioner to make the deed and convey the property to the purchaser.[6]

The County Court of Campbell County had sold fifty acres of the poorhouse land to John S. Youtsey. Since there seemed some doubt as to the power of the court to sell the land, the legislature, in 1858, authorized the presiding judge to convey the title to the purchaser by a deed in fee simple.[7]

In 1860, the legislature legalized the sale of the poorfarm in Greenup County to Henry A. Mead,[8] also the sale of part of the poorfarm in Todd County.[9]

There were also many difficulties in finding funds to purchase the land and construct the buildings for a poorhouse. For instance: In 1861, the Harrison County Court was given authority to borrow not more than four thousand dollars to purchase the land and erect the buildings for a county poorhouse and workhouse. In order to pay off this debt, the court could levy an ad valorem tax not exceeding three cents on each one hundred dollars worth of taxable property. If there were a balance after paying the loan, it could be used to meet the regular expenses of the county. The

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[1] Ibid., February 9, 1856, Vol. I, chap. 118.

[2] Ibid., February 25, 1860, Vol. II, chap. 550.

[3] Ibid., February 27, 1860, Vol. II, chap. 619, secs. 1-3.

[4] Ibid., February 23, 1860, Vol. II, chap. 506, secs. 1-3.

[5] Ibid., March 7, 1868, Vol. II, chap. 917, secs. 1-2.

[6] Ibid., February 5, 1856, Vol. I, chap. 93.

[7] Ibid., February 17, 1858, Vol. II, chap. 740, secs. 1-2.

[8] Ibid., February 27, 1860, Vol. II, chap. 646, secs. 1-3.

[9] Ibid., March 1, 1860, Vol. II, chap. 890, secs. 1-2.

proceeds of the sale of the old poorhouse were first to be applied on the loan, and the tax used to defray the balance.[1]

In 1867, the county judge of Webster County was empowered to summon the justices to decide whether or not a poorhouse should be built. The county court could levy an additional tax of not more than one dollar on each tithe and not more than ten cents on each one hundred dollars worth of taxable property.[2]

Bracken County was empowered, in 1886, to borrow not more than five thousand dollars, at an interest rate not exceeding 6 per cent per year, to pay off the indebtedness due to the building of a new poorhouse. The money was also to be used to purchase furniture, and move the poor from the old, to the new poorhouse.[3]

Authorization to raise additional funds by an ad valorem tax was also given to Madison,[4] in 1858; Hancock,[5] in 1869; Logan,[6] in 1870; Boone,[7] in 1880; and Cumberland[8] and Woodford[9] Counties, in 1884.

In two instances it was possible to obtain some information from the statute concerning the way in which the county courts met the costs of their poorfarms and poorhouses other than by a county levy. For example: Provision was made in 1834 for the use of fines and forfeitures in Campbell County for the support of the poorhouse and its inmates. The superintendent of the institution was to receive the money collected by the sheriffs, constables, and justices of the peace who were to prepare for the county court semi-annual lists of all the fines and forfeitures.[10]

The County Court of Cumberland County was empowered, in

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[1] Ibid., May 24, 1861, chap. 83, secs. 1-3.

[2] Ibid., December 18, 1867, Vol. I, chap. 41, secs. 1-2.

[3] Ibid., March 8, 1886, Vol. I, chap. 164, sec. 1.

[4] Ibid., February 16, 1858, Vol. II, chap. 642.

[5] Ibid., January 27, 1869, Vol. I, chap. 1347, sec. 1.

[6] Ibid., January 22, 1870, Vol. I, chap. 117, sec. 4.

[7] Ibid., January 24, 1880, Vol. I, chap. 64, sec. 1.

[8] Ibid., January 31, 1884, Vol. I, chap. 63, sec. 1.

[9] Ibid., April 4, 1884, Vol. I, chap. 638, sec. 1.

[10] Ibid., February 4, 1834, chap. 302, secs. 2-3.

1854, to use the funds resulting from the sale of vacant land to purchase a poorfarm and poorhouse for the indigent white persons in the county. The court could levy a twenty cent poll tax on the whites, receive donations, or make other orders to finance the cost of the poorhouse.[1]

In one instance plans were made for a county to raise additional money for the maintenance of those in the poorhouse. For the support of the poorhouse paupers, the County Court of Nicholas County was authorized in 1865 to levy an ad valorem tax of four cents on each one hundred dollars worth of taxable property. The sheriff was to collect these taxes in the same way as the public revenue of the county, and receive a 5 per cent commission for making the collection.[2]

In another instance quite detailed provision was made for poorhouse care in Lewis County. The county court, or the judge in vacation, was authorized to appoint a commissioner to sell the poorfarm. If the farm were sold for cash, the proceeds were subject to the orders of the county court. If it were sold for credit, the commissioner was to execute the notes and retain a lien on the farm.[3] Not less than three citizens were to be appointed by the court for the selection of a new site, which was to be as near as possible to the county seat.[4] The management of the new farm was to be under the county court or the judge whose duty it was to appoint a suitable superintendent to take care of the farm, treat the paupers humanely, and require them to do reasonable work. The superintendent was to hold his office for four years, be subject to the orders of the court, and be bonded for the faithful performance of his work.[5]

Whether or not the counties took advantage of the authority given them by the legislature with reference to poorhouses is not a matter of record, but a general statement of a social welfare worker, in 1886, indicated that few of the counties had poorhouses or made provision for the poor. However, the city of

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[1] Ibid., March 7, 1854, Vol. II, chap. 599, secs. 1-2.

[2] Ibid., January 31, 1865, chap. 768, sec. 1.

[3] Ibid., March 16, 1878, Vol. I, chap. 501, sec. 1.

[4] Ibid., sec. 2. [5] Ibid., sec. 3.

Louisville had a large institution which was usually full.[1]

In the latter part of the nineteenth century special provision was made in a few counties where "infirmaries" were substituted for poorhouses. The first of these institutions was provided for Mason County in 1874,[2] and ten years later, in 1884, a similar institution was established in Fleming County. The latter needs to be given considerable attention as the act included a residence requirement for relief; an attempt was made to treat the intercounty and interstate problems of settlement; and plans were made for the sale of a pauper's property if he were given infirmary care. The statute, in 1884, pointed out that the burden of caring for the poor was becoming very great for the tax payers of Fleming County. They believed that the pauper laws encouraged dependency, and that a self-sustaining system, and a plan whereby the county might be compensated for its pauper relief, was needed. The county court of claims was empowered to sell the old poorhouse property, and purchase a more accessible and desirable place, not to exceed a cost of twenty thousand dollars.[3] The new site was to be within two to five miles of Flemingsburg. To meet these additional costs, after using the funds from the sale of the old poorhouse property, the court of claims could levy an ad valorem tax.[4]

Poor relief in the infirmary was to be granted to persons having one year's residence. Indentured servants or apprentices who had been legally brought into the county and who had served their masters or mistresses for a year were also eligible for care in the infirmary. The obligation of the county to support the poor was not to be discontinued for those who had left the county until they had gained a settlement in the county to which they had gone. Neither did poor persons lose their settlement if they returned within a year unless they had acquired a settlement elsewhere during that period.[5] No pauper, while a public charge, could gain a settlement for admission to the infirmary, nor could

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[1] Randolph H. Blair, "Reports from States," Proceedings of the National Conference of Charities and Corrections, 1886, p. 317.

[2] Acts, February 4, 1874, chap. 159.

[3] Ibid., February 25, 1884, Vol. I, chap. 232, sec. 2.

[4] Ibid., sec. 3.

[5] Ibid., secs. 6-7.

a person who had moved to the county to become a public charge, gain a settlement for that purpose.[1]

Another feature, common to poor relief administration, was that the county court or presiding judge could arrange for the care of a non-resident in the infirmary if relief was absolutely necessary. Those persons not having a legal settlement, but who were becoming a public charge, could be removed to the county or state where they had a legal residence, unless they gave security to reimburse the county for their care.[2]

When a complaint was made to the county court or to the judge that a person with a legal settlement was in need of relief, the court or judge could make an investigation of the case. The directors or the superintendent of the infirmary could be ordered to receive the pauper upon the basis of proof of pauperism, determined in open court. The order was to include a statement of facts, giving the name, age, birthplace, length of residence, previous habits, and present condition of the pauper. If the directors or the superintendent of the infirmary had knowledge of facts which would prevent the admission of the pauper, he was not to be admitted until these facts were presented.[3]

In all cases, a person declared to be a pauper in the way described was to be sent to the infirmary unless impracticable or inexpedient, in which case relief could be granted out of unappropriated county funds.[4]

The board of directors of the Fleming County Infirmary was to consist of five members, appointed annually by the court of claims, but at least three of the five were to be members of the court of claims. Board members were not to receive more than one dollar and a half a day for their services, which was paid out of the proceeds of the institution or out of the county levy.[5] The board was charged with the management and direction of the institution, and it could appoint a clerk and define his duties, make all the contracts and purchases, and establish the rules and regulations to maintain sobriety, morality, and industry. However, all rules and regulations of the board were subject to repeal or

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[1] Ibid., sec. 8.
[2] Ibid., sec. 9.
[3] Ibid., sec. 10.
[4] Ibid., sec. 11.
[5] Ibid., sec. 16.

change by the court of claims.[1]

The board could recommend, but the court of claims was to appoint the superintendent for a two year term or office. He was to be paid a reasonable compensation, live at the institution, perform all the duties suggested by the board and court of claims, and he could be removed by the court when complaint was made by the board.[2]

The superintendent could require the poor to do reasonable and moderate work suitable to their age and strength.[3] The money resulting from this labor was to be used for the support of the institution.[4] The superintendent was to keep a book showing the name and age of all those received in the infirmary, the date they arrived, and the date discharged. He was also to keep a full account of the work, its value, by whom done, type of work, as well as an accurate monthly expense account of the institution.[5]

The poor were to be treated humanely, and furnished with neat, clean, comfortable sleeping apartments, good and comfortable clothing, and wholesome food. The institution was to be visited at least once a month by a committee of the board, who were to examine the condition of the paupers, their food and clothing, treatment, and labor performed. The committee was also to inquire into the management and conduct of the farm, and make a full annual report to the court of claims.[6]

If a pauper had any real or personal property, the directors could take possession, sell it, and use the proceeds for his support. There was one exception. If the labor of the pauper was sufficient to maintain him, in whole or in part, the balance resulting from the sale of the property was to be given to him when he was released.[7] If the pauper died, and left a balance, the money was to be paid to those legally authorized to receive it.[8]

The act of 1873 pertaining to the poor and poorhouses was repealed in so far as it conflicted with this act of 1884. However, the latter act was not to go into effect until ratified and approved by a majority of the legally qualified voters of the

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[1] Ibid., sec. 17.
[2] Ibid., sec. 19.
[3] Ibid., sec. 20.
[4] Ibid., sec. 23.
[5] Ibid., sec. 21.
[6] Ibid., sec. 22.
[7] Ibid., sec. 28.
[8] Ibid., sec. 9.

county at the regular election in August, 1884.[1]

Other county infirmaries were established in the 1880's, but none was developed as extensively as those for Mason and Fleming Counties. In 1888, a Board of Commissioners was established for the management of the Bracken County Infirmary. The commissioners were appointed by the court of claims for a term of two years.[2] They were to transact the business pertaining to the control and management of the institution and grounds, and pass on all the accounts for supplies.[3] A bonded receiver, appointed by the county clerk, was to receive all the money levied and collected by the sheriff for the institution. On orders of the commissioners, he was to use the money for the support of those in the infirmary and was to make a full annual report to the court of claims.[4] The commissioners were to employ a superintendent and keeper who was to hold office at the pleasure of the board.[5] Two dollars a day was allowed for the services of the commissioners, and the clerk was given a reasonable amount for his work.[6]

In 1886, the judge of the Lewis County Court was authorized to appoint a board consisting of two to four justices and the county attorney to sell part or all of the infirmary farm and buildings.[7] The members of the board were to take an oath and execute a bond that they would faithfully discharge their duties.[8] The proceeds of the sale were to be used to purchase another county infirmary.[9]

In the following year, 1887, an interesting case went up to the Court of Appeals concerning the finality of the power of the county judge to commit paupers to the Lewis County Infirmary. A man by the name of Bruce had agreed for a consideration to take care of the paupers who were sent to the infirmary by the county judge. Later he tried to recover compensation alleging that the persons sent to the infirmary were not paupers. The upper court

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[1] Ibid., sec. 33.

[2] Ibid., February 17, 1888, Vol. I, chap. 174, sec. 2.

[3] Ibid., sec. 4. [4] Ibid., sec. 6.

[5] Ibid., sec. 7. [6] Ibid., sec. 8.

[7] Ibid., May 15, 1886, Vol. II, chap. 1151, sec. 1.

[8] Ibid., sec. 2. [9] Ibid., sec. 3.

agreed with the lower court that the decision of the county judge as to who were paupers was conclusive, and that Bruce could not recover.[1]

In 1888, the Harrison County Court was empowered to sell the poorhouse, and make arrangements for the care of the paupers in a county infirmary.[2] The court could issue not more than twenty-five thousand dollars worth of bonds to meet the indebtedness incurred by the new expenditures, have exclusive control of the infirmary, make the rules and regulations, adopt plans for its operation, and provide for receiving the paupers.[3] An ad valorem tax to retire the bonds and interest was authorized and was imposed.

In 1901, another case went up to the Court of Appeals in which the board of directors of the Mason County Infirmary tried to recover from an estate subsequently acquired by an inmate. On February 19, 1893, Dina Smith was accepted as an indigent pauper at the infirmary where she remained until January, 1898, when she was granted a United States pension. She received six hundred and seventy dollars back pay, and an allowance of eight dollars a month for the rest of her life. On January 25, 1898, she was found to be of unsound mind, and C. B. Pierce, Jr. was appointed as her committee. The board of directors of the infirmary then brought a suit to recover a judgment against the committee for five hundred and four dollars which included the cost of her board and medical care while an inmate of the institution. The claim was dismissed by the Mason Circuit Court, and the case was taken to the Court of Appeals.

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[1] Bruce v. Lewis County, 8 Kentucky Law Report 879 (1887).

[2] Acts, March 7, 1888, Vol. I, chap. 411, sec. 1.

[3] Ibid., sec. 2.

[4] Ibid., secs. 3, 6. See Louisville and Nashville R.R. Co. v. Harrison County, etc., 16 Kentucky Law Reports 678 (1895), a case in which the validity of the Harrison County tax was upheld. In this case, Harrison County and the Harrison County Court sued the Louisville and Nashville Railroad Company in 1895 to recover $193.56 for taxes due in the year 1892. The railroad claimed that the tax was not authorized by law, but the upper court agreed with the lower and held the tax valid.

The upper court held that while the act of February 14, 1874, authorized the directors to take possession of a pauper's property and apply it to his support during the time he was in the institution, there was nothing in the act which indicated that the directors were entitled to recover an estate subsequently acquired. If Dina Smith had continued to be an inmate of the poorhouse after having received her government pension, the board of directors would have been entitled to have the pension paid to them for support and maintenance. The judgment of the lower court was affirmed.

There were other questions of interest which became the subject of litigation. Among these was that of determining whether the keeper of a poorhouse was a public officer or an employee. In a recent case of 1935, it was held that the keeper was not a public officer, and that his salary was subject to change by the fiscal court. This case also revealed some of the financial problems of the counties during the economic depression of the 1930's.

A. B. Dowdy, on October 6, 1931, was appointed poorhouse keeper of Graves County for a two year term. He was to receive fifteen dollars a month for the maintenance of each inmate, but since the pay of officers and employees was being reduced in 1932, he voluntarily asked that his allowance be cut to fourteen dollars a month per inmate. On August 4, 1932, at a special term of the fiscal court, the allowance was further cut to twelve dollars and a half a month. Dowdy objected to the cut and continued to present his claim for fourteen dollars a month, but the court allowed only twelve dollars and a half. Later he brought suit against Graves County for eight hundred and sixty-four dollars and five cents with interest, the amount allegedly owed him since January 10, 1934. The Graves Circuit Court granted the claim, but the upper court did not agree. The upper court held that Dowdy was only an agent or employee and his compensation was therefore controlled by the terms of his employment.

If a person were a public officer, the position must be created by the Constitution, legislature, or a municipality under authority conferred by the legislature. The position must involve a delegation of the sovereign power of government, the powers and

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[1] Board of Director's of Mason County Infirmary v. Smith's Committee, 111 Kentucky Reports 636 (1901).

duties must be defined by the authority creating the position, and the duties be performed by the incumbent independently of a superior authority other than contained in the law creating the position.

The original appointment of Dowdy fixed his compensation at fifteen dollars a month for each inmate "until further fixed by an order of the court," therefore there was no question but that his salary was subject to change by future orders.[1]

This same position, that the poorhouse keeper was not a public officer, had been taken by the attorney general several years earlier. On December 5, 1914, the attorney general said that poorhouse keepers were agents or employees of the fiscal court. The keeper got his right and authority to serve under a contract with the court.[2]

There was also the question of the authority of the county court to provide support for the poor in any way other than in the poorhouse. This point was nicely illustrated in a case taken from the Fayette Circuit Court to the Court of Appeals in 1869. The cholera epidemic of 1833 had left many helpless and destitute children in Lexington and in Fayette County. Most of them were girls who, because of their sex and age, were not suited for poorhouse care. In order to aid these children, the Orphan Society of Lexington was incorporated in 1834, and was enlarged and remodeled in 1868, creating a debt of twenty-five hundred dollars. In order to meet the deficit, the Lexington City Council gave one thousand dollars and the Fayette County Court of Claims gave fifteen hundred dollars. However, the county judge filed a petition in equity in the lower court enjoining the payment by the county.

The lower court decided against the orphanage, but the upper court disagreed. The latter pointed out that while the presiding judge of Fayette County was the county court for most purposes as described by the act of January 7, 1852, the justices of the peace associated with him constituted the county court for levying and appropriating local taxes. The latter was the county court for fiscal purposes, and among the other duties of the court

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[1] Graves County v. Dowdy, 258 Kentucky Reports 544 (1935).

[2] Attorney General of the Commonwealth of Kentucky, Fourth Biennial Report (Frankfort: The State Journal Co., 1916), p. 336.

of claims was that of making provision for the maintenance of the poor.[1] The inherent power of the state to provide for the poor was plenary, and the poorhouse care was only a partial fulfillment of the trust. It was only one of various ways by which aid could be given to destitute people. The power to buy land for the poorhouse was not compulsory, and did not abolish the power to provide for the poor in other ways.

The upper court went on to explain that many counties did not have poorhouses, and that foundlings and orphans were not fit objects for care in a poorhouse. It was in the public interest to care for these groups of the poor so that they would become moral and useful citizens "to bless rather than, as ignorant and demoralized nuisances, to curse society." Food, raiment, and shelter furnished by a poorhouse met only the physical wants, but the mental and moral wants required careful tutelage, neither contemplated nor possible in a mere poorhouse. The judgment of the lower court was reversed, the cause remanded, and instructions given to dismiss the petition.[2]

Lastly, there was the question of whether or not a person had to pay for care in the almshouse if he received a pension while there. Sarah A. Buttram of Edmonson County had been in the poorhouse for five years and then drew a pension under which she received fourteen hundred and fifty dollars. She gave the county three hundred and seventy dollars for her care in the poorhouse, but moved the next fiscal court for a return of her money. The court refused and she brought suit against the county. The lower and upper court agreed that she was not liable to pay for the cost of her care while in the poorhouse.[3]

The evidence of the use of the Kentucky poorhouses during the nineteenth century has been meagre, but considerable material was available which described the use and the conditions of these

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[1] Acts, January 7, 1852, chap. 358, chap. xx, Art. XX, sec. 1.

[2] Orphan Society of Lexington v. Fayette County, 6 Bush's Reports (Ky.) 415 (1869). One judge dissented on the grounds that "maintenance of the poor" meant food, clothing, and other conveniences, but the fifteen hundred dollars in this case was for the enlargement and reconstruction of the institution, and therefore, not authorized.

[3] Potter-Matlack Trust Company, Administrator of Sarah A. Buttram v. Edmonson County, 210 Kentucky Reports 705, (1925).

institutions in the twentieth century. In 1904, there were 1,678 persons in the Kentucky poorhouses as compared with 1,578 in 1890.[1] Eighty-one per cent, or 1,360, were white, and 19 per cent, or 318, were colored.[2] The distribution by sex was about even, 890 were men and 788 were women.[3] It was difficult to believe that of the 1,678 inmates, ninety-three were less than five years of age, eighty-six were between five and nine, fifty-six were between ten and fourteen, and thirty-four were between fifteen and nineteen years of age. This meant that 269 were less than twenty years of age.

By 1910, the situation had changed very little; at that time there were 1,522 persons in the poorhouses. One thousand two hundred thirty-eight were white, and 284 were colored. The distribution by sex showed 871 men and 651 women.[4] While the following statistics are not comparable to the data of 1904, nevertheless, it was significant that in 1910 there were in the poorhouses 144 children who were less than sixteen years of age.[5]

An early study of 1911 revealed that many of the poorhouses were located far from the county-seat towns and were usually on "poor" or "bad" roads.[6] Few people visited the institutions; priests and ministers were seldom present. The farms were usually of poor quality, and ranged in size from five acres in Crittenden County to 325 acres in Pike County, but the average was 150 acres.[7]

Some of the buildings were in poor condition, one county used a log cabin and four had buildings valued at less than five hundred dollars each. The highest salaries for superintendents,

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[1]U. S. Bureau of the Census, Paupers in Almshouses, 1904 (Washington: Government Printing Office, 1906), p. 7.

[2]Ibid., p. 15. [3]Ibid., p. 53.

[4]U. S. Bureau of the Census, Paupers in Almshouses, 1910 (Washington: Government Printing Office, 1915), pp. 82-83.

[5]Ibid., p. 116.

[6]Edward Tuthill, County Infirmaries of Kentucky (Lexington: State University Press, 1911), p. 1. The date of this report may not be correct, the textual material would indicate that the study was made in 1911. Edward Tuthill was a Professor of History and Sociology at the State University of Kentucky.

[7]The total number of institutions included in this study was not given.

one hundred dollars a month, were paid in Bullitt, Caldwell, Fayette, Kenton, and McCracken Counties.[1] Usually the fiscal court granted a fixed annual sum for the support of each inmate which ranged from fifty dollars to seventy-five dollars a year with half that amount being paid for children. The average salary for superintendents probably was about four hundred dollars a year, but many received less than that amount.[2]

Many defectives were found in the institutions such as blind, crippled, epileptic, feeble-minded, insane, and paralytic persons. There were also many children born in the institutions of feeble-minded parents.[3] The able-bodied were expected to work, but they usually did not enter the institution until in the fall, and left in the spring. Recreation facilities and reading materials were badly needed.

The chief recommendations of this study were: (1) exclusion of the children, epileptics, tramps, and disorderly persons, (2) careful selection of the superintendents, (3) improvement of the buildings and equipment, (4) definite rules for admission and discharge of inmates enforced by the county judge, and (5) improvement of the methods of inspection.[4]

In 1914, the state welfare authority called attention to the fact that many of the insane were in the county poorhouses which, in many instances, were a "disgrace to civilization." It was believed at that time that the problem could be met by building more institutions for the insane.[5] Again, in 1916, the welfare authority pointed out that many harmless and incurable types of insane persons were in the poorhouses where they lived under "intolerable conditions." The report stated further that in the state insane hospitals, the patients became "tranquil, cheerful, and as comfortable as their condition admitted," but those in the jails or poorhouses were subject to "restlessness, misrule, wretchedness, protracted paroxysms, and many kinds of indescribable suffering."[6]

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[1]Tuthill, op. cit., p. 5. [2]Ibid., p. 6.

[3]Ibid., p. 7. [4]Ibid., p. 9.

[5]State Board of Control for Charitable Institutions, Fifth Report, 1911-1913 (Frankfort: The State Journal Co., 1914), p. 14.

[6]State Board of Control for Charitable Institutions, Sixth Report, 1913-1915 (Frankfort: The State Journal Co., 1916), p. 16.

In 1921, another student of this problem called attention again to the children who were in the poorhouse. In some institutions, the children were not even segregated from the aged and ill.[1] One county poorfarm had five cottages scattered about on a tract of land of about five acres. Three families of children had been living on the farm for two or three years, and the superintendent had placed five of the children in family homes during the previous year.[2] In another instance the officials of a county in which there was a city of thirty-five thousand population maintained that there were no children in the poorhouse, but a later visit revealed seven children ranging from eight to sixteen years of age. They were living in a farm house separate from the adults, but the adults and children ate together in the same dining room. During the preceding seven years, the superintendent of this institution had placed nineteen children in private homes.[3]

The 1923 report of the state welfare authority made it clear that a large percentage of those in the almshouses were feeble-minded. There was no state supervision of these institutions; neither was there any investigation of the amount of relief expended in the several counties, or of the number and character of the persons receiving the relief.[4] Many of these needs were emphasized again in the next biennial report of the same authority.[5]

In 1924, when a survey was made of the state government, the report revealed that some of the county judges admitted that the poorhouses were kept as a threat to drive off the poor.[6] The poorhouse in Lewis County was described as "unfit for human habitation," while in many poorhouses the insane and feeble-minded

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[1]Sara A Brown, "Child-Caring Institutions in Kentucky" (National Child Labor Committee, New York, 1921), Part I, p. 14. (Unpublished.)

[2]Ibid., p. 18. [3]Ibid., p. 19.

[4]State Board of Charities and Corrections of the Commonwealth of Kentucky, Report, June 30, 1923 (Frankfort: The State Journal Co., 1924), p. 14.

[5]State Board of Charities and Corrections of the Commonwealth of Kentucky, Report, June 30, 1925 (Frankfort: The State Journal Co., 1926), pp. 39-40.

[6]Efficiency Commission, Report of the Government of Kentucky (Frankfort: The State Journal Co., 1924), I, 607.

persons were included with the poor. The report suggested that the program of the central welfare authority be expanded to include the supervision of the county jails, poorhouses, and other local charities. The central authority should prescribe the forms of records kept and require periodical reports from jailers and poorhouse commissioners. It should also be able to recommend to the governor the removal of these officers. The fiscal courts should appoint boards of five persons each who would serve without pay, but act as "visitors" of the local institutions. In counties or districts, local public welfare directors should be appointed if they could be afforded. These directors of public welfare could, if desirable, serve as representatives of the state authority for public welfare.[1]

As late as 1925, an attempt was made to place a considerable number of the harmless, senile, insane patients in the poorhouses. However, few of the institutions were fit for human habitation, particularly for custodial patients, so that this program was greatly handicapped.[2] Most of seventy-one poorhouses from which reports were obtained were operated on a contract basis; their total population was 1,036.[3]

In 1926, a study of poorhouses in the United States was made by a group of benevolent organizations; this study indicated the interest of new groups in some of the problems of poorhouse care. This study revealed that thirty-five out of seventy-one Kentucky institutions had less than ten inmates each. The average cost was ninety-six dollars a year, or less than twenty-seven cents a day per person for food, fuel, clothing, medical care, board of employees, and upkeep of the farm.[4] The physical condi-

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[1] Ibid., II, 105-106.

[2] U. S. Bureau of Labor Statistics, The Cost of American Almshouses (Washington: Government Printing Office, 1925), p. 33.

[3] Ibid., p. 10. It should be noted that this was the first study which indicated the number of poorhouses in Kentucky, but reports were not received from twenty-three institutions; therefore, the total was ninety-four.

[4] Harry C. Evans, The American Poorfarm and Its Inmates (Published by the Loyal Order of Moose, Moosehart, Ill.; The Brotherhood of American Yeomen, Des Moines, Iowa; The Maccabees, Detroit, Mich.; The Supreme Tribe of Ben Hur, Crawfordsville, Ind.; and The American Insurance Union, Columbus, Ohio, 1926), p. 46.

tions of a few institutions indicated the woeful situation throughout the state. The following are cited for illustrative purposes:

> Caldwell County-Four two room shacks; superintendent's residence burned two years ago; his family now lives in one of the pauper shacks; old grates out of repair; coal oil lamps; broken down privies; furniture scant and broken down; old ragged comforts and blankets.
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> Pulaski County-No superintendent; no matron; no paid employee; managed by a young woman with two little girls who is given her keep in exchange for her work; she cannot read or write; in addition to cooking for the inmates, she takes in washing to buy clothes for herself and children; inmates care for their own dirty rooms; food and lighting poor; no screens; bed vermin; no effort at segregating diseased inmates; no running water; inmates neglected; outdoor privy used by all; fireplace; well; no sewerage.[1]

The most intensive and exhaustive study of the poorhouses was made in 1935, and the results, like the earlier studies, do not present an encouraging picture. At that time there were poorhouses in ninety-eight of the one hundred and twenty counties, and one in Louisville, making a total of ninety-nine of which ninety-eight were visited in the study.[2] There were 2,417 inmates representing 2,064 different families. This number was considerably greater than the 1,457 inmates reported by the United States Bureau of the Census in 1923.[3] It could not be determined whether or not this difference represented a real increase in the poorhouse population of the state or whether more poorhouses were included in the 1935 study.[4]

In regard to the provision for whites and negroes, seventy-one institutions admitted both groups, but only fifty-six had separate houses or rooms for the negroes. In six of the counties which did not admit negroes to the poorhouses, arrangements were made for their care in rented rooms or private homes. Ninety-five

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[1] Ibid., p. 47.

[2] The number of poorhouses in 1935 was slightly larger than the number reported in 1925, but no explanation was given for this difference.

[3] U. S. Bureau of the Census, Paupers in Almshouses (Washington: Government Printing Office, 1923), p. 4.

[4] Mrs. Robert I. Kutak, "Care of the Dependent Aged in Kentucky" (Kentucky Emergency Relief Administration, Louisville, 1935), p. 3. (Mimeographed.)

institutions reported 1,839 white and 346 negro inmates which meant that 16 per cent of the total poorhouse population was colored.

It was almost unbelievable to learn that family groups were admitted in sixty-three institutions, orphaned children in thirty-two, and nineteen were used as detention homes. Out of the total population of 2,417 inmates, 101 were less than eighteen years of age, 498 were between eighteen and sixty years of age, and 1,818 were more than sixty years of age.[1]

In only four institutions was a social investigation made before the admission of an inmate. In most cases, the institution was owned by the county or city, but in eight cases the farm was owned by the superintendent, and in one case the superintendent rented the farm.

In about half of the counties, an annual appropriation was made by the fiscal court for the maintenance of the poorhouse, and a flat salary was granted to the superintendent. In the other institutions, the board of the inmates was paid on a per capita basis, and the superintendent made what he could. In thirty-eight cases, the superintendent farmed the land for his own benefit, in addition to receiving a flat salary or a per capita grant payment. If a salary were paid, the board of the superintendent and his family was usually included. If a per capita payment plan was used, some counties paid the superintendent on the basis of the number of meals served, such as twelve cents or eighteen cents a meal. Some counties paid a daily rate of fifteen cents to seventy-five cents, weekly rates of one dollar to four dollars, or monthly rates of four dollars to sixteen dollars.[2]

Some counties reported that they took care of the poor by letting them out to the lowest bidder and paying seventy-five dollars a year or the lowest bid. However, it was difficult to get exact information on this point. Ninety-four of the institutions were located in the open country, four were in towns or cities, but in fifty-eight cases there were no transportation facilities. Most of the poorhouses were located on farms, forty-five of them reported that they had more than one hundred acres of land.

Most of the institutions were old farmhouses, thirty-two were lighted by electricity, one by gas, and sixty-six used oil

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[1] Ibid., p. 5. [2] Ibid., p. 4.

lamps. Sixty-six had no bath tubs or showers; one had central heat, fifty-four had stoves, and twenty-one had grate fires. Physical examinations at the time of admission were given in only seventeen institutions.[1]

At the conclusion of this discussion of county poorhouses, it is not necessary to indicate that Kentucky, after one hundred and forty-four years of public relief experience, had made no progress in meeting the problems of poorhouse care. The use and the conditions which prevailed in these institutions during the twentieth century were similar to those which social work students usually describe as being typical of similar institutions in the nineteenth century.

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[1] Ibid., p. 6.

CHAPTER IV

THE CHILD BORN OUT OF WEDLOCK

The problem of the child born out of wedlock involves the determination of the relationship of the child to (1) the mother, (2) the father, (3) the provision for the child's maintenance and support, and (4) the effect of a later marriage of the parents. It could be noted that the relationship of the mother to her illegitimate child has in some ways been more advantageous than that of the married mother to her child who, under the common law, was entitled only to "reverence and respect" without authority of any kind.[1] Under the English common law, the bastard, according to Blackstone, was filius nullius, the child of nobody. Consequently, the relationship of the mother and the illegitimate child is one which has been created altogether by statute.

The provisions of the Kentucky illegitimacy act of 1795, referred to in the statutes as the "Bastardy Act,"[2] were essentially the same as those of the Virginia act of 1785,[3] which was an expansion of an English act of 1733.[4] The object of the Kentucky act was (1) to protect the welfare of illegitimate children, (2) to provide relief for the local community by charging the support of illegitimate children to the fathers, and (3) to give justice to the mother in the enforcement of a natural obligation upon the father.

This act provided that a single woman, except a slave, who had been delivered of an illegitimate child could go before a justice of the peace of the county where the father resided and swear that she had an illegitimate child, giving the day, place

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[1] Sophonisba P. Breckinridge, The Family and the State (Chicago: University of Chicago Press, 1931), p. 415.

[2] Littell's Laws, December 14, 1795, Vol. I, chap. 190, secs. 1-3.

[3] Hening's Statutes at Large, 1785, Vol. XII, chap. 60, secs. 16-17.

[4] 6 George II, c. 31.

and county of birth, the sex of the child, and the name of the father. The justice could then issue a warrant to the constable, sheriff, or coroner requesting that the alleged father be brought before him. When the alleged father was brought before the justice of the peace, the latter could bind him with sufficient security to appear before the next county court. If he refused or neglected to give security, the justice could commit him to jail until he did enter into recognizance or was discharged by due process of law. If the court adjudged the person to be the father of the child, orders could be entered for the maintenance of the child by charging the father with its support for as long a period as the court thought best. To assure payment of the support money, the father was to enter into bond with security approved by the court. If he neglected or refused to make the payments, he could be committed to jail until he gave bond and security, or discharged himself by giving a schedule of his property and taking the oath of an insolvent debtor. If an illegitimate child died after a father had entered into bond, the latter was released from further responsibility after paying the amount due prior to the death of the child.[1]

If a sheriff were charged with being the father of an illegitimate child, the coroner was to execute the warrant for apprehending him, but if the coroner or constable were charged with being the father, the sheriff was to execute the warrant. In all other cases, the constable executed the warrants.[2] However, if a sheriff, coroner, or constable refused or neglected to execute a warrant, he had to pay ten pounds by an action in debt, one half to go to the person suing, and the other half to the state.[3]

These were the essential characteristics of the basic illegitimacy act of 1795, and it presents many interesting questions to students of this problem. For instance, there is the question as to what the county courts thought was an adequate allowance. In most cases, the allowance for the care of illegitimate children was approximately the same as that for the care of paupers, or pauper idiots and lunatics, which in the latter part of the eighteenth and the early nineteenth centuries was twenty to twenty-five

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[1] Littell's Laws, December 14, 1795, Vol. I, chap. 190, sec. 1.

[2] Ibid., sec. 2. [3] Ibid., sec. 3.

dollars a year, but which reached fifty dollars a year by the middle of the nineteenth century.[1]

One case in Jefferson County in 1841 was an exception, and because the allowance of one hundred dollars a year for seventeen years seemed to be excessive, it was taken up to the Court of Appeals. The mother had been sworn in the Jefferson County Court and she had proved the identity of the father sufficiently to warrant the judgment of the lower court. Without regard to the ability of the father, or the condition of the parties, the Court of Appeals agreed that the lower court had acted soundly in charging the father with one hundred dollars annually for seventeen years. However, the upper court thought it was a large sum, larger than would be warranted in ordinary cases, but it did not care to disturb the decision of the county court.[2]

It is important to note that the act of 1795 provided that any single woman, not being a slave, could begin an illegitimacy action. The question arose shortly whether or not a free negro or mulatto could prosecute the white father of her illegitimate child. In a case in 1824, Williams, who was a justice of the peace in Hardin County, permitted a bright mulatto single woman to make an oath that Blincoe was the father of her illegitimate child. A warrant was issued and Blincoe was arrested and bound over to the next county court. Then Blincoe brought an action of trespass, assault and battery, and false imprisonment against Williams who attempted to justify under the warrant but the Hardin Circuit Court refused.

The Court of Appeals held that "any single woman, not being a slave" could swear and obtain a warrant in cases concerning illegitimate children, and free single persons of color were not excluded. But no negro or mulatto could be a witness except in pleas of the Commonwealth against negroes or mulattoes, or in civil cases, where negroes or mulattoes alone were the parties. Neither were negroes, mulattoes, or Indians permitted to give evidence except between or against negroes, mulattoes, or Indians. But these disqualifications did not prevent such persons from taking an oath or making an affidavit to begin a controversy, al-

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[1] See above, pp. 7-10.

[2] Evarts v. Commonwealth, 2 Monroe's Reports (Ky.), 55 (1841).

though the mother could not be a witness at the trial. It did not mean that there could be no conviction in the county court, because the court could admit other evidence upon which to convict the father. Williams had acted correctly in permitting the oath of the mulatto woman and issuing the warrant. The case was remanded for a new trial.[1]

Under the act of 1795, the parents of an illegitimate child could enter into written contracts outside the county courts for the support of the child, but these contracts were not a bar to a later prosecution of the father by the mother. These points are clearly indicated in the following case. Sally Hill brought an action on August 27, 1835, against George Turner of Garrard County, the alleged father of her illegitimate child. The Garrard County Court discharged the case because of a contract in writing between the parties dated August 21, 1835, in which the father agreed to pay the mother one hundred dollars for the support of two illegitimate children. The one hundred dollars was to consist of a horse valued at forty dollars, and six ten dollar notes which were to be paid in six annual instalments. The contract also provided that the mother would discharge the father from the illegitimacy proceedings then pending in the lower court and never bring further prosecutions against him.

The Court of Appeals held that the contract would not make for the dismissal of the illegitimacy proceedings as the written instrument was dated August 21, 1835, and pertained to two illegitimate children, while the proceedings begun in the lower court on August 27, 1835, related to one illegitimate child only. The child in the latter proceedings could not be identified with those in the written instrument.

An agreement between the father and mother was no bar to the legal action against the father. The upper court declared that if the parents of illegitimate children could make contracts which would bar legal actions, the artful and unprincipled fathers might evade the law by false and inadequate promises which were without security and never fulfilled. Such contracts, if fair, were not illegal, but they could not paralyze the law. The written instrument in this case was not adequate to bar or arrest the proceedings begun in the lower court; therefore, the case was re-

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[1] Williams v. Blincoe, 5 Littell's Reports (Ky.) 171 (1824).

manded.[1]

While the case which was just cited gives a clear presentation of the position taken by the Court of Appeals with reference to written contracts between the parents of illegitimate children, the same position had been taken by the upper court in a case which it had decided in 1832. Ann Woodruff, who was the mother of an illegitimate child, had been given a twenty dollar promissory note by Jacob Straughan, the father, for the maintenance of their child. The Madison Circuit Court said the note was void, but it was upheld by the upper court.

The upper court held the note legal whether it be considered for past cohabitation or the obligation to contribute to the support of the defendant's child. It was also an agreement of the parties not to proceed under the act of 1795, and this was not immoral, illegal, or inconsistent with public policy. The object of the act of 1795 was to secure and enforce a natural obligation. This act gave the mother a means to compel the father to aid her in the support of their illegitimate child or children. It was a civil remedy, and not a penal prosecution. It was not the public duty of the mother of an illegitimate child to assert her statutory right. Many mothers might prefer the wretchedness of destitution and poverty rather than begin action in a county court under the "bastardy act." If these contracts were declared void, these children might become burdens on the community. Since the promissory note was held valid the lower court was reversed.[2] This position of the upper court with reference to written contracts was again substantiated in a later case.[3]

Another interesting problem was whether or not the illegitimacy cases were penal or civil actions. This question was most clearly indicated in the following case, although it was referred to in several cases and first decided as early as 1809.[4]

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[1] The Commonwealth (Sally Hill, Relator) v. George Turner, 4 Dana's Reports (Ky.), 511 (1836).

[2] Burgen v. Straughan, 7 Marshall's Reports (Ky.), 583 (1832).

[3] Turner v. Commonwealth, 1 Monroe's Reports (Ky.), 205 (1841).

[4] Schooler v. Commonwealth, Littell's Select Cases (Ky.), 88 (1809).

On July 3, 1824, a warrant was issued for a man named Withers charging him with being the father of an illegitimate child of Sarah Anne Stafford. The child was born December 24, 1822. When the alleged father appeared before the county court, he moved to quash the proceedings and discharge the case. The court agreed on the ground that the period during which action could be taken had expired, applying the view that the proceedings were penal, and penal actions had to be brought within a year after the offense had been committed. The Court of Appeals, however, made it clear that these actions were not penal. The proceeding which had been taken against Withers was not for the purpose of penalizing him for having committed fornication in becoming the father of an illegitimate child, but its purpose was to force him to perform a natural duty by contributing to the child's support.[1] The same question was raised in other cases, which distinctly specified that these cases were civil actions.[2]

There was also the question whether or not the parties in the illegitimacy cases were entitled to a trial by jury. In 1829, a writ of error was prosecuted to reverse an order of the Jessamine County Court, which required the plaintiff to give bond and security for the support of an illegitimate child. The counsel for the plaintiff maintained the action to be unconstitutional because there had been no jury trial, and the county court had erred in overruling a motion for continuance of the case. The Court of Appeals stated that it had repeatedly declared that illegitimacy actions were not penal; therefore a jury trial was not necessary. However, in this case, the lower court had erred in not granting a continuance. The plaintiff, in asking for the continuance, swore that he could prove by two witnesses that the mother had sexual intercourse with several persons about the time the child was conceived. At the time of the trial in the lower court one witness had been out of the state, and the sheriff had failed to serve a subpoena on the other. The upper court thought that these witnesses should have been heard; therefore, the case was

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[1] Commonwealth for Stafford v. Withers, 4 Monroe's Reports (Ky.), 510 (1827).

[2] The Commonwealth (Sally Hill, Relator) v. George Turner, 4 Dana's Reports (Ky.), 511 (1836).
Burgen v. Straughan, 7 Marshall's Reports (Ky.), 583 (1832).

remanded to the lower court for another trial.[1] The right of the parties in illegitimacy cases to a jury trial was changed in 1852, when the statutes were revised. The county courts, if either party requested, were given authority to impanel a jury of by-standers, who were to receive no compensation for their services.[2]

Before the completion of the registration area in the United States in 1933, it was difficult in some areas to determine the exact birth date of a child, and this was an important point in the illegitimacy actions, as illustrated in the following case. In 1825, William Burnett of Estill County was found to be the father of an illegitimate child of Ruah Pearson. For the support of the child, born on October 28 or 29, 1824, he was to pay twenty dollars a year for five years. However, Burnett objected because he had been acquitted by the same court on the charge of being the father of an illegitimate child of Ruah Pearson born January 29, 1825; therefore, the first trial was a bar to the second. The county court maintained that while the two charges were for the same child, there was a difference in the birth dates, and the first trial was not a bar to the second. The Court of Appeals agreed with the lower court and held that if the birth date of the child had been the same in both cases, the first trial would have barred the second. This was not the fact, and since the act of 1795 provided that the birth date of the child was to be accurately stated, and the birth dates were not the same in this case, the lower court had not erred.[3]

After the county courts had determined the amount of the allowances which should be paid by the fathers for the support of their illegitimate children, the question arose as to when the payments were due. In 1822, an interesting case was handled by the Court of Appeals, in which the only error assigned was that the order did not indicate the time when the annual payments were to be made. The upper court held that this exception could not be sustained. The father in this case was directed to pay the

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[1] Scantland v. Commonwealth, 6 Marshall's Reports (Ky.), 585 (1831).

[2] Acts, January 7, 1852, chap. 358, chap. xxii, Art. XX, sec. 2.

[3] Burnett v. Commonwealth, for Pearson, 4 Monroe's Reports (Ky.), 105 (1825).

mother of the child thirty dollars a year for five years. The first payment was due one year from the date of the order.[1]

Very early in the nineteenth century, the Court of Appeals was asked to pass on a case involving the responsibility of a father for two illegitimate children by the same mother. Hall had been apprehended by a justice's warrant. The mother had been a married woman prior to her being pregnant, but her husband "had been absent eight years, but was heard of in that time," so that the county court adjudged her a single woman and convicted Hall of being the father of the children. The lower court made a support order, but Hall appealed the case to the Court of Appeals. The upper court held that a person who absented himself beyond the sea, or elsewhere, for seven years successively, was presumed to be dead unless proof was made that he was alive. The presumption was to stand until it was refuted by adequate proof, and the presumptions in this case were not sufficient. To charge Hall with the support of both children was not unreasonable said the upper court. If he were the father of both, he was the father of either, and the expression in the statute, "any bastard child" applied to each and either. The judgment of the county court was affirmed.[2]

Another question was the effect on an illegitimate child of a later marriage of the parents. The act of 1796 provided that if a man later married a woman by whom he had had one or more illegitimate children, they were legitimated if recognized by him. The issue also in marriage, deemed null in law, were legitimate.[3] Again it should be pointed out that this act was essentially the same as the Virginia Act of 1785,[4] and the object was to repeal the common law doctrine that a child, illegitimate at birth, could never be made legitimate. According to this provision, the subsequent marriage of the parents, and recognition of the child by the father, made the child legitimate.

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[1] Page v. Commonwealth, 1 Littell's Reports (Ky.), 157 (1822).

[2] Hall v. the Commonwealth, by Ruth Young, 3 Hardin's Reports (Ky.), 479 (1808).

[3] Littell's Laws, Vol. I, December 19, 1796, chap. 276, sec. 19.

[4] Hening's Statutes at Large, 1785, Vol. XII, chap. 60, sec. 17.

This point is clearly indicated in a case which went up to the Court of Appeals in 1839. William D. Jackson, Bourbon County, had an illegitimate child whose name was Virilla. Later he married the mother, recognized Virilla as his daughter, and by the same mother he had Columbus, a postnuptual son. After the deaths of William D. Jackson, his wife, and Columbus, Samuel D. Jackson, an unmarried brother of the father, died, leaving a mother, seven brothers and sisters, and Virilla as claimants to his estate. The Bourbon Circuit Court gave Virilla and her husband $338.60, but the administrators appealed the case to the upper court.

The important point seemed to be whether or not Virilla was a legal representative of her father. The upper court held that the object of the Kentucky act of 1796 as well as the Virginia act of 1785 was to legalize, upon the prescribed conditions, the births of antenuptual children, and make them as legitimate as if born in lawful wedlock. The subsequent marriage of the parents, and recognition of any such child by the father, ipso facto, legitimated the child who would otherwise be illegitimate. Since the lower and upper courts agreed, the judgment of the lower court was affirmed.[1]

In the following cases of illegitimate children whose parents had later married, the legislature authorized them to change their surnames to that of their fathers; recognized them as legitimate, and gave them full inheritance rights in the personal and real property of their fathers. For example:

In 1838, the legislature provided that the children of James G. Sharp, Green County, and Mary Northcut, whose names were Harvey, Thomas, and William Northcut, should henceforth be given the names of Harvey, Thomas, and William Sharp, since their parents had been married.[2]

Mary Ann and Sarah Elizabeth Sellers were illegitimate children of John S. Perry by his present wife. The legislature, in 1838, made them legitimate, changed their names to Mary Ann and Elizabeth Perry, and gave them full inheritance rights.[3]

Josiah, Margarett, and Samuel Cusick were illegitimate

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[1] Jackson's Administrators against Moore and Wife, 8 Dana's Reports (Ky.), 170 (1839).

[2] Acts, February 1, 1838, chap. 671.

[3] Ibid., December 17, 1838, chap. 967.

children of William Teer and Catherine Cusick. The parents had since married and the legislature, in 1839, changed the names of the children to Josiah, Margarett, and Samuel Teer.[1]

Louisa Jane, Elizabeth, Frances Ann, and John Holebrook, children of Maston Glidewell and Susannah Holebrook were born before the marriage of their parents. In 1840, the legislature changed their surname to Glidewell and made them their father's lawful heirs as if they had been born in wedlock.[2]

Joel D. Hughes married Nancy Tolin, who had two illegitimate children, Emeline and Amanda. The parents were now living together as man and wife, so that the legislature, in 1841, changed the surnames of their children to Hughes, and gave them full inheritance rights in the estate of their father as if they were born in lawful wedlock.[3]

The children of Thomas and Minerva Hinds, Sarah Ann, Amanda Jane, Martha, and Katharine Mullins, were made legitimate by an act of the legislature, in 1846, and their surnames were changed to Hinds. They were made capable of inheriting from their father as if born in lawful wedlock.[4]

In 1847, John, James Wallace, Martha Jane, Nancy Catharine, and Henry Jones, illegitimate children of Haywood and Betsy Jones, were all made legitimate, and given full rights of inheritance from their father, Haywood Jones, as if they had been born in wedlock.[5]

Robert Goodin's name was changed to Robert Henson in 1849, and he was made capable of inheriting the estate of Robert Henson, husband of his mother, as if a legitimate child of his father.[6]

William Harrison Shull, Warren County, was an illegitimate child of James and Amanda M. Eaton. The legislature, in 1850, changed his name to William Harrison Eaton and he was given full inheritance rights in the estate of his parents as if born in lawful wedlock.[7]

Cyrenius, Francis Ann, Hiram, and Hetty Argenus Smith were the children of Hiram and Mary Keath of Pulaski County. Mary Heath's maiden name was Mary Smith. In 1856, the children were made legitimate, and were given all the rights, privileges, and

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[1] Ibid., January 5, 1839, chap. 996.

[2] Ibid., January 23, 1840, chap. 132.

[3] Ibid., January 4, 1841, chap. 25.

[4] Ibid., February 10, 1846, chap. 144, sec. 1.

[5] Ibid., January 20, 1847, chap. 58.

[6] Ibid., January 22, 1849, chap. 94.

[7] Ibid., February 9, 1850, chap. 101.

immunities under the laws of descent and inheritance as if born in lawful wedlock.[1]

Another important aspect of the problem of illegitimacy related to the inheritance rights of the child with reference to the mother, the father, and the legitimate or illegitimate siblings. Attention is again called to the act of December 19, 1796, which provided that illegitimate children were capable of inheriting or transmitting inheritance on the part of their mother as if they were legitimate. If a man later married a woman by whom he had had one or more illegitimate children, they were legitimated if recognized by him. The issue also in marriage, deemed null in law, were legitimate.[2]

However, the problem of the inheritance rights of the illegitimate child as set forth in the act of 1796 did not come before the Court of Appeals until 1834, or thirty-eight years after the passage of the act. The case was that of James T. Edgar, an illegitimate child whose father was Henry Edgar. After he inherited a tract of land from his father, he died without issue before he was twenty-one years of age. The land was being contested between his mother, whose name was Allan, and a purchaser for the legitimate children of Henry Edgar's mother. The question was whether or not the children of Henry Edgar's mother were his legitimate brothers and sisters, because if an infant died without issue but with property inherited from the father, the mother could not succeed thereto if there were any living brothers or sisters of the father.

The Court of Appeals held that under the common law an illegitimate child had no inheritable blood; he could not receive nor transmit an inheritance to his father, mother, brothers, or sisters. The object of the Kentucky legislature of 1796 and the Virginia legislature of 1785 was to remove the impediments to the transmission of inheritable blood from illegitimate children in the descending line with reference to maternal inheritance, and give them a capacity to inherit in the ascending line from and through the mother. Illegitimate brothers and sisters could not inherit from each other, so that the judgment of the Harrison Cir-

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[1] Ibid., January 25, 1856, Vol. I, chap. 54.

[2] Littell's Laws, December 19, 1796, Vol. I, chap. 276, secs. 18-19.

cuit Court was affirmed. Judge Underwood wrote a minority opinion stating that he believed that illegitimate children of the same mother might take and transmit estates to and from each other by descent as if they were legitimate.[1]

The inability of illegitimate children, prior to 1840, to inherit from each other or from their legitimate siblings was well illustrated by the fact that a specific act had to be passed in one case to overcome these difficulties. For instance:

> The legislature, in 1835, provided that the illegitimate children, Shelton, Hannah, Elizabeth, John, and Alexander Morris were to inherit and be entitled to their share of their deceased brother's estate. They were also given power to inherit and to be entitled to their share of each other's estates, as if they were legitimate children.[2]

Some of these inheritance difficulties were corrected by the legislature in 1840 when the law of descent was amended and provision made that the mother of an illegitimate child should be capable to inherit and take by descent as an heir of her child, and illegitimate brothers and sisters of the same mother were made capable to inherit and take by descent from each other as if they were legitimate.[3]

In 1848, the new act of 1840 was reviewed by the Court of Appeals. An action was brought in the Harrison Circuit Court on the demise of Nancy Lewis, to recover a small piece of land which she claimed as an heir to her husband, Alexander Lewis, who was an illegitimate child, and who survived his mother but died intestate and without issue. James Remington claimed that he was the heir by reason of his being the son of the same mother as Alexander Lewis. The upper court again said that the act of 1796 made it clear that illegitimate children were capable of inheriting or transmitting inheritance only on the part of their mother as if they were legitimate. The mother could not inherit from her illegitimate child, but the act of 1796 enabled illegitimate children to take by inheritance through their mother, and to pass inheritance in the same line to their own issue.

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[1] Scroggin v. Allan, et al., 2 Dana's Reports (Ky.), 363 (1834).

[2] Acts, February 28, 1835, chap. 851.

[3] Ibid., February 18, 1840, chap. 356.

The act of 1840 gave the mother the right to inherit from her illegitimate children, and provided that brothers and sisters born out of wedlock of the same mother would be capable of inheriting from each other as if legitimate. But this act made no provision for inheritance between legitimate and illegitimate children of the same mother. In this particular case, it followed that if the defendant, Remington, was the legitimate son of Alexander Lewis' mother, he was not the heir, and the plaintiff was entitled, unless there were some illegitimate issue of the same mother.

However, the upper court held that the lower court had erred in instructing the jury that in the absence of any proof, the presumption of the law was in favor of the legitimacy of James Remington. The law presumed in favor of the legitimacy of a person born in wedlock. The plaintiff had to show title by proving that there was no other heir of her husband, and it appeared that there was a person who might be heir, depending upon his being illegitimate, so that it was necessary for the plaintiff to prove his legitimacy. The lower court was reversed, and the case remanded for a new trial.[1]

Although a new act was passed in 1851 with reference to the inheritance rights of illegitimate children, it made no changes in the acts of 1796 and 1840. By the laws of descent, illegitimate children were still capable of inheriting and transmitting only on the part of the mother, but illegitimate children of the same mother were capable of inheriting and transmitting an inheritance on the part of each other as if they were born in lawful wedlock of the same parents.[2] If a man were the father of an illegitimate child whose mother he later married, neither the child nor its descendants were illegitimate if recognized by the father before or after marriage.[3]

Just prior to the enactment of this latter act, an interesting situation in regard to the inheritance rights of an illegitimate child came before the legislature.

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[1] Remington v. Lewis, 8 Monroe's Reports (Ky.), 606 (1848).

[2] Acts, March 24, 1851, Vol. I, chap. 617, chap. xxv, sec. 5.

[3] Ibid., sec. 6.

James McGuire of Greenup County died in 1829 and left no heirs other than Riley McGuire, an illegitimate child. The legislature, in 1851, provided that the interest of the Commonwealth which was vested in the estate of James McGuire was to be granted to the illegitimate child, who was authorized by appropriate court action to claim the estate of his father. All the real estate which the child recovered was to be subject to the debts and liabilities of the father.[1]

The following case which went up to the Court of Appeals gives attention to the new act of 1851. Charles Ramsey of Union County died in 1854 and left an estate of land and slaves. He left no wife or children. The action for a claim to the estate was begun by the children of his deceased brothers, William and Alexander Ramsey. Then John Allen, the appellant, who was the son of a dead sister of Charles Ramsey, made a claim to the estate. There was no question but that Allen was the son of Nancy Ramsey Allen, but it was proved that he and all his brothers and sisters were illegitimate children. The circuit court dismissed the case, but Allen appealed to the Court of Appeals.

The upper court held that the revised statutes of 1851 made no change in the law with reference to the inheritance rights of illegitimate children as established by the acts of 1796 and 1840. The act of 1796 allowed illegitimate children to take and pass an inheritance from or through their mother. They had no legal kindred except in the descending line from themselves or in the ascending line through their mother. The act of 1840 related to a different aspect of the situation, and made no changes in the act of 1796. In this case the applicant's claim as a collateral heir, or as the child of his mother, who would, if alive, have been a collateral heir of her brother, was not maintainable. The judgment of the lower court was affirmed.[2]

Now that the inheritance rights of illegitimate children have been reviewed for the period prior to the Civil War, attention may be called to the many cases in which the legislature, by a special act, gave the father the right to confer full inheritance rights upon his illegitimate child, the right to give the child his name, and the right to recognize the child as legitimate. These were cases in which the parents had not married, but legis-

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[1] Ibid., March 8, 1851, Vol. II, chap. 386.

[2] Allen v. Ramsey's heirs, 1 Metcalfe's Reports (Ky.), 635 (1858).

lative action was necessary to overcome the limitations of the law in regard to the right of an illegitimate child to inherit from its father. These situations were similar to the adoption cases, except that the relationship between the child and the father was one of blood relationship. For example:

Temple West, Christian County, maintained that he was the father of Sally West, who was living with him. He wanted to legitimate the child so that she would have the same status as his lawful issue and heir. The legislature, in 1829, gave the child the same inheritance rights in the real and personal property of Temple West as if she had been born in lawful wedlock.[1]

Jether Stroud, also of Christian County, was the father of Minerva Alma Right Stroud, an illegitimate child who was living with her father. He was anxious that she be given legal right to inherit his property. In 1831, the legislature acknowledged the present name of the child and provided that she and her issue might have all the rights of a legitimate child with reference to the inheritance of the personal and real property of her father, and transmit inheritance as if she were a legitimate child.[2]

Jacob Spaw of Casey County was an illegitimate child of Jacob Smith. He was given the name of Jacob Smith and the legislature, in 1834, provided that his illegitimacy would be no bar to his inheriting the estate of his father as his rights would be the same as if he were born in wedlock.[3]

Mary Ann Forester of Barren County was an illegitimate child. Her father, William H. Cole, wanted to make her legitimate with reference to her inheritance rights. The legislature, in 1854, changed her name to Mary Ann Cole, and gave her the same inheritance rights in her father's estate, real and personal, as if she were legitimate.[4]

Robert W. Ragland, Warren County, asked that the illegitimate children of Sina Taylor, for whom he admitted his paternity, be made capable of inheriting from him. In 1835, the legislature confirmed the names of the children, Eleanor Fowler, Martha Clopton, Robert Emmet, Nancy, Andrew Jackson, and Sarah Martin Ragland, legitimated each of them and gave them full inheritance rights to the lands and tenements, goods and chattels, rights and credits of Robert Ragland as if they were born legitimate.[5]

In 1837, James Martin of Livingston County wanted to

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[1] Acts, December 16, 1829, chap. 194.

[2] Ibid., November 26, 1831, chap. 618.

[3] Ibid., February 5, 1834, chap. 305, secs. 1-2.

[4] Ibid., February 22, 1834, chap. 454, secs. 1-2.

[5] Ibid., February 23, 1835, chap. 757.

change the name of his six year old illegitimate son, then residing in his family, so that the son could inherit from his estate. The legislature changed the name of the son from Francis Marion Thompson to Francis Marion Martin, and gave him all the rights of inheritance in the estate of James Martin as if he were legitimate.[1]

In the same year, 1837, John and Mary Angeline West, illegitimate children whose father was Temple West of Christian County, were made legitimate by the legislature, and were given the same rights of inheritance as if they were born in lawful wedlock.[2]

John M. Garrison, Allen County, was the father of Luther, Robert, John, Charles, Thurston, George W., and Sidney Ann Stamps. The legislature, in 1838, made the children legitimate, changed their names to Luther, Robert, John, Charles, Thurston, George W., and Sidney Ann Garrison, and each was made capable of inheriting in law and equity all the lands and tenements, goods and chattels, rights and credits of John Garrison as if they were legitimate children.[3]

Simeon, an illegitimate child of William Haydon and Margaret Markland, was made legitimate by the legislature in 1838, given the surname of Haydon, and all the rights, privileges, and immunities of a legal heir. He would be able to receive, hold, and enjoy property, real or personal, from the father and mother as if he were a legitimate child.[4]

George O. Stovall, son of George J. Stovall of Logan County, was made legitimate by the legislature in 1839, and given all the rights and privileges of inheritance as if born in lawful wedlock.[5]

In the same year, 1839, Senit Young, Bath County, said he was the father of Isaac Whitson. The legislature made the boy legitimate, changed his name to Isaac Young, and gave him full inheritance rights in law and equity to the lands and tenements, goods and chattels, rights and credits, of Senit Young as if he were born in lawful wedlock.[6]

Also in 1839, James V. and George M. Fortune, sons of Elisha Fortune of Monroe County, were made legitimate, and given full inheritance rights as if born in lawful wedlock.[7]

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[1] Ibid., February 3, 1837, chap. 222.

[2] Ibid., February 23, 1837, chap. 413.

[3] Ibid., January 8, 1838, chap. 539, sec. 1.

[4] Ibid., February 1, 1838, chap. 713.

[5] Ibid., January 21, 1839, chap. 1051.

[6] Ibid., chap. 1055.

[7] Ibid., December 18, 1839, chap. 30.

In 1840, Louisiana Esters was allowed to change her name to Louisiana Daniel when she was made legitimate and capable of inheriting the real or personal estate from her father, Richard E. Daniel, as if she were born in wedlock.[1]

In the same year, 1840, Telitha Jane Hix was made legitimate; her name was changed to Telitha Jane Guffey, and she was given full inheritance rights from her father, Bradcut Guffey, as if she were born in lawful wedlock.[2]

Gilmore Wilcut was the five year old illegitimate child of Peter Hay. In 1840, he was made legitimate, his name was changed to Gilmore Hay, and he was given the same right to inherit in the estate of his father as if he were legitimate.[3]

Isaac M. Belveal was an illegitimate son of Samuel Belveal. He was made legitimate in 1840, and capable of taking by descent the estate of his father, real or personal, as if he were born in lawful wedlock.[4]

The legislature, in 1841, changed the name of William A. Bowdoun to William A. Shelby, and he was made a lawful heir of his father, Reese Shelby. He was also made capable of inheriting his father's estate as if he had been a legitimate child.[5]

In 1841, Alvis R. Harris, an illegitimate child of Elizabeth Harris and Peyton Murphy, was made legitimate by the legislature, and a lawful heir of Peyton Murphy. His name was changed to Alvis R. Murphy.[6]

John Wiggins Flora was an illegitimate child whose father was James Wiggins Flora. The legislature, in 1845, made the child legitimate, and capable of inheriting in law and equity, the lands and tenements, goods and chattels, rights and credits of James Wiggins Flora as if born in lawful wedlock.[7]

Betsey Walton, Monroe County, was an illegitimate child whose father was John H. Grimes. The legislature, in 1846, made the child legitimate, and capable of inheriting from her father. Her name was changed to Elizabeth V. Grimes.[8]

In 1846, John Lewis Holley's name was changed by a legis-

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[1] Ibid., January 7, 1840, chap. 42.

[2] Ibid., December 15, 1840, chap. 2.

[3] Ibid., chap. 3.

[4] Ibid., chap. 4.

[5] Ibid., February 10, 1841, chap. 240.

[6] Ibid., chap. 241.

[7] Ibid., January 24, 1845, chap. 93.

[8] Ibid., January 14, 1846, chap. 21, secs. 1-2.

lative act to John Lewis King, and he was made capable of inheriting the estate of his father, Philip King, as if he were legitimate. By the same act, Aurelius Valerion Grigsby's name was changed to Aurelius Valerion Hall, and he was made capable of inheriting the property of Thomas Jefferson Hall as if he were legitimate.[1]

Henry Lewis Price, Green County, was made legitimate in the same year, 1846, and his name was changed to Henry Lewis Tucker. He was also made capable of inheriting the estate of his father, Richard Tucker.[2]

Also in 1846, Missouri and Mary Jane Arnold, children of John Arnold, were made legitimate, and capable of inheriting the lands and tenements, goods and chattels, rights and credits, of John Arnold as if they were born in lawful wedlock.[3]

Sylledon Sidney Horine was an illegitimate child whose father, Randle W. Smith, of Jefferson County, had her name changed by a legislative act, in 1847, to Sylledon Sidney Smith. She was given the right to inherit from the estate of her father and to enjoy all the rights of a legitimate child if her father gave his written consent to the Jefferson County Court.[4]

Harry Wicks was an infant of Ann J. Wicks. The legislature, in 1847, changed his name to Harry Ferguson, and he was made capable of inheriting from William D. Ferguson of Christian County, as if born in wedlock.[5]

In 1848, the name of Benjamin Franklin Garret was changed to Benjamin Franklin Violett after he was made legitimate, and capable of inheriting from St. Clair Violett.[6]

James Holland of Caldwell County had five illegitimate children by a woman whose name was Walston. The legislature, in 1848, authorized the children, Lawson, Angelina, John, Alexander, and William Walston to change their names to Lawson, Angelina, John, Alexander, and William Holland and be made legitimate as if born in lawful wedlock.[7]

Upon the petition of Y. O. Booker, Green County, father of William Cobb, who was an illegitimate child of Elizabeth Cobb, the legislature, in 1849, changed the name of the child to William

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[1] Ibid., January 21, 1846, chap. 40, secs. 1, 3.

[2] Ibid., February 10, 1846, chap. 144, sec. 3.

[3] Ibid., February 23, 1846, chap. 312.

[4] Ibid., January 16, 1847, chap. 40.

[5] Ibid., January 22, 1847, chap. 7.

[6] Ibid., January 28, 1848, chap. 131.

[7] Ibid., February 26, 1848, chap. 352.

Booker and made him legitimate. He was also made capable of inheriting all the lands, tenements, chattels, rights and credits of Y. O. Booker, as if he were a legitimate child.[1]

Walter Winston Anderson was made legitimate in 1849, and capable of inheriting from his father, Alfred Anderson, as if he were legitimate.[2]

M. J. Worters, Ballard County, wanted his natural son, Jerome Hawthorn, made legitimate and capable of inheriting from him. The child's name was changed to Jerome Worters, in 1850, and his inheritance rights were made the same with respect to M. J. Worters, as if he had been born in lawful wedlock.[3]

In 1850, Mary Ridge's name was changed to Mary King. She and Maria Davenport, wife of Henry Davenport, of Lincoln County, were made legitimate and capable of inheriting the estate of their father, David H. King, as if born in lawful wedlock.[4]

Richard Simpson Lake and Francis Lake were illegitimate children whose father was William Hill. The legislature, in 1850, changed their names to Richard and Francis Hill, made them legitimate, and capable of inheriting the estate, real or personal, from their father, William Hill, as if they were legitimate.[5]

In 1850, Malvina Jones of Pulaski County had her name changed by legislative action to Malvina Smyth. She was made legitimate as a child and heir of Hiram Smyth, the same as if born in lawful wedlock.[6]

By another act of the legislature in 1850, the names of Mimy, Emily, and Sally Taylor were changed to Mimy, Emily, and Sally Worley. They were made legitimate and capable of inheriting the estate of their father, Reubin Worley, as if they were legitimate.[7]

Willis Gamblin was an illegitimate child of Eli Cook of Hopkins County. In 1850, his name was changed to Willis Cook, and he was made capable of inheriting the estate of his father, Eli Cook, as if he were a legitimate child.[8]

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[1] Ibid., January 10, 1849, chap. 3.

[2] Ibid., February 12, 1849, chap. 184.

[3] Ibid., January 19, 1850, chap. 14.

[4] Ibid., February 9, 1850, chap. 120.

[5] Ibid., chap. 110.

[6] Ibid., February 2, 1850, chap. 90.

[7] Ibid., March 1, 1850, chap. 222, sec. 2.

[8] Ibid., March 5, 1850, chap. 393.

In 1854, James K. Polk Burgess, alias James K. Polk Tucker, of Scott County, was legitimated as the son of William C. Burgess. He was made capable of inheriting the estate of William C. Burgess as if he had been born in lawful wedlock.[1]

In the same year, 1854, Nancy Margaret Ragland, alias Nancy Margaret Crouch, of Clarke County, was legitimated as the daughter of Isaac N. Ragland, and she was given full inheritance rights in the estate of Isaac N. Ragland.[2]

Lewis, Sarah Ann, and Catharine Davis were illegitimate children of Samuel B. Haddix. The legislature, in 1856, gave them full inheritance rights in the property of their father as if they were legitimate.[3]

Curtis Davis was an illegitimate child whose father was King F. Baker of Trigg County. In 1856, he was made legitimate and the lawful heir of his father.[4]

John Patterson, born September 1, 1844, was an illegitimate child of Frances Barnes. In 1858, he was made the legal heir of his father, Thomas Patterson of Madison County, the same as if he were born in wedlock.[5]

In 1858, the legislature declared Louisa Gambill the legitimate daughter of Benjamin F. Gambill. She was made capable of inheriting from Benjamin F. Gambill, his heirs, etc. She was also entitled to care, nurture, and protection as if she were a legitimate child, and for these services she was to be obedient.[6]

Robert Manlius Leach, an illegitimate child whose father was Washington Thompson, was made legitimate by the legislature in 1858, and given full inheritance rights as a legal heir of his father.[7]

Reuben, eight years old, and Mary Henry, five years old, were illegitimate children of Nancy Dyer. J. R. Lucas was the father of the children. The legislature, in 1860, made the children legitimate, and gave them all the rights, privileges, immunities, and responsibilities of legitimate children with reference to their father.[8]

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[1] Ibid., March 7, 1854, Vol. II, chap. 626.

[2] Ibid., chap. 628.

[3] Ibid., January 19, 1856, Vol. I, chap. 23.

[4] Ibid., March 10, 1856, Vol. II, chap. 666.

[5] Ibid., January 14, 1858, Vol. I, chap. 72, sec. 1.

[6] Ibid., January 15, 1858, Vol. I, chap. 111.

[7] Ibid., February 17, 1858, Vol. II, chap. 749.

[8] Ibid., January 17, 1860, Vol. I, chap. 82, sec. 1.

In the same year, 1860, Walter Winston and Ann Dorothy Hurt, illegitimate children whose father was Alfred Anderson of Green County, were made legitimate, and capable of inheriting the real and personal estate of their father as if they were born in lawful wedlock.[1]

Although reference has already been made to the revised statutes of 1852, in regard to the laws of descent, attention must also be called to the other provisions of that act which did not differ greatly from the basic act of 1795. All children were considered illegitimate who were born out of lawful wedlock. It was now possible for any unmarried white woman to go before a judge of the county court of the county in which the child was born, and accuse any person of being the father of her child. The judge could then proceed to examine her under oath, reduce her statement to writing, and sign it.[2] If, at the time of this examination, the child was less than three years of age, a warrant could be issued requiring the alleged father to be brought before the judge of the county court in the county where he resided. The judge could then require him to enter into bond with good security to appear at the next term of the county court in the county where the warrant was issued.[3]

The illegitimacy warrants could be executed by any sheriff or constable, and if necessary the coroner or jailer might be used. If the alleged father refused to be bonded, the judge could commit him to the county jail until he entered into bond or was discharged by due course of law.[4]

At the trial, the mother of the child could be a witness unless she was incompetent. The father, if competent, could also be examined if he so desired. Both parties could introduce other evidence.[5] If the alleged father were found to be not responsible, then he was discharged immediately unless a new trial was granted. If the jury found him to be the father, the court could then proceed to make an order for the maintenance and education of the child. These costs were to be met by charging the father

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[1] Ibid., February 15, 1860, Vol. I, chap. 206.

[2] Ibid., March 24, 1851, Vol. I, chap. 617, chap. xxii, secs. 1-2.

[3] Ibid., sec. 3.

[4] Ibid., secs. 4-5.

[5] Ibid., secs. 6-7.

with regular payments on an annual basis.[1]

If the father refused to make the payments, he could be committed to jail until he gave bond, paid the instalments, or was discharged as an insolvent debtor.[2] If he were bonded, and did not make the regular payments, ten days' notice was given; the county court could then proceed to give a judgment against the sureties for the amount of the payments then due, including the interest and costs.[3] If an illegitimate child died, the father was discharged from making further payments providing he paid those which were due prior to the death of the child.[4]

Following the revision of the statutes in 1852, there was one case which went up to the Court of Appeals which evaluated certain sections of the new act. This was a proceeding against Richard Chandler, who was less than twenty-one years of age, to charge him with the support of an illegitimate child. He was arrested in May, 1862, and entered into a recognizance to appear at the next term of the Muhlenburg County Court. He twice failed to appear, and moved for a continuance because he was a soldier in the United States Army and could not appear. The motion was overruled, the jury found him guilty, and charged him twenty-five dollars a year for eleven years for the support of the child.

Since he did not appear, he contended that the county court had no authority to proceed but could only act to force a forfeiture of the recognizance. The Court of Appeals thought differently. The upper court declared that it was Chandler's duty to appear, but his failure to do so did not deprive the lower court of its jurisdiction. The forfeiture of the recognizance would be of no benefit to the mother and child, and neither would they be benefitted if Chandler, in that way, could deprive the court of its jurisdiction. A new proceeding should have been instituted. The upper court held that the lower court might give relief in those cases by trial and judgment against the defendant and if he failed to appear, an attachment might be used to compel performance of the judgment.

Chandler's counsel also maintained that he was not liable under the illegitimacy act because he was an infant of nineteen years. The upper court pointed out that no authority was cited

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[1] Ibid., secs. 8-9.
[2] Ibid., sec. 10.
[3] Ibid., sec. 11.
[4] Ibid., sec. 12.

in support of this position, and the general law held infants liable for their torts. However, the lower court had erred in not appointing a guardian ad litem for the infant as he was entitled to protection and could not appoint an agent or attorney. He had to be defended by his guardian. The lower court also erred in admitting the testimony of the mother that the defendant had promised to marry her, as the child was illegitimate regardless of the promise to marry. The judgment was reversed and the case remanded for a new trial.[1]

Another question presented by the illegitimacy section of the revised statutes of 1852 was whether or not a separate affidavit had to be returned with the warrant. Leah Sexton, a single woman of Morgan County, had an illegitimate male child on October 26, 1856. She named John W. Hazlerigg as the father, and he was arrested, brought before the county judge, and entered into a recognizance to appear at the next county court. He did appear, objected to the judge, and arrangements were made for E. McClure to preside. Then Hazlerigg moved to dismiss the case because no separate affidavit had been returned with the warrant. The motion was sustained, the case was dismissed, and the Commonwealth appealed.

The Court of Appeals held that the revised statutes did not require that the preliminary examination and statement made by the mother under oath should be filed with the warrant. The only requirement was that the judge should examine the mother under oath, reduce her statement to writing, and sign it. However, the order dismissing the warrant was erroneous on other grounds, as there were no facts showing that the judge had not made the examination in the form required by the statutes. The judgment was reversed, and the case remanded for further proceedings in conformity with the opinion.[2]

After the illegitimacy laws were revised by the acts of the early fifties, there were no further changes before the Civil War other than an act of 1860 which related to deaf and dumb women with illegitimate children. The members of the legislature be-

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[1] Chandler v. Commonwealth, 4 Metcalfe's Reports (Ky.), 66 (1862).

[2] Commonwealth v. Hazlerigg, 18 Monroe's Reports (Ky.), 29 (1857).

lieved that deaf and dumb women were unprotected, and when they had illegitimate children there was no adequate means to punish the father. Provision was made for any deaf and dumb unmarried white woman, who had or was to have an illegitimate child, to begin action against the alleged father in the county court of the county where the child was born or was to be born. The woman was to be accompanied by a credible person who was to swear to a written statement that he knew the mother of the illegitimate child, and that he understood her by signs, motions, or characters.[1] This person might also act as her interpreter, and was to take an oath that he would interpret accurately for the deaf and dumb woman. After the judge learned the name of the alleged father, he could administer the illegitimacy oath, issue a warrant for the father, and proceed under the existing illegitimacy acts. The interpreter could also be used as a witness at the trial of the case.[2]

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[1] Acts, March 3, 1860, Vol. I, chap. 1309, sec. 1.

[2] Ibid., sec. 2.

CHAPTER V

THE VAGRANT

The Kentucky vagrancy act of 1795 remained practically unchanged, except for the acts of 1834 and 1839, throughout the first half of the nineteenth century. This early act was based upon the Virginia acts of 1748, 1776, and 1787.[1] It was enacted largely because the members of the legislature were concerned about the large number of idle and disorderly persons who had no visible estate or employment, and who, although able to work, "rambled about" from one county to another. These persons had no lawful means of earning a livelihood, and because of their idle and disorderly lives, they were incapable of paying their taxes. By the act of 1795, the term "vagrants" included all persons who were able-bodied but who loitered and "rambled about" without visible means of support. Vagrants also included beggars who were not living at home or who had left their wives and children without means of support so that their families became chargeable to the county. The keepers and exhibitors of an "A. B. C." or "E.O." gaming table or "Pharaoh bank" or any other table or bank were also vagrants, as well as other idle and "dissolute persons" who were without any reasonable means of subsistence.[2]

When a person suspected of vagrancy was found in a county, a justice of the peace could issue a warrant, on information, or on his own knowledge, asking the sheriff or constable to bring such person before him. The justice, if he thought the person to be a vagrant, could commit him to the county jail until the next session of the county court, unless the vagrant was released on bond with good security. If the county court decided that the person was a vagrant and a minor, then the sheriff, when directed by the court, was to bind him out to someone of useful trade or occupation until the minor was twenty-one years of age. If the

[1] Hening's Statutes at Large, 1748, Vol. VI, chap. 18; 1776, Vol. IX, chap. 23; 1787, Vol. XII, chap. 48.

[2] Littell's Laws, December 15, 1795, chap. 196, sec. 1.

vagrant were more than twenty-one, the court could direct the sheriff to hire him out to the highest bidder for not more than nine months, but no one, minor or adult, could be bound or hired out unless a jury had first determined that the person was a vagrant. If the vagrant had a wife or family in the county, the court could set him at liberty, after bonding him, with the understanding that he would return to his wife, or wife and family, and provide for their support and maintenance. However, if the wife, or wife and family, lived in another county, the sheriff or constable was to take the vagrant to a justice in that county where he could be dealt with as directed in this statute.[1]

The money earned by a vagrant while hired out was to be used to pay his debts. If there were no debts, it was to be paid to him at the end of his period of hire, except that if he had a family, the money from his hire was to be used for its support.[2] If no one would accept the vagrant for hire or furnish the diet and clothing which would be needed during servitude, the court could order the sheriff to give him not more than twenty-five lashes on his bare back.[3]

No one was allowed to hire or employ a tithable from another county for more than two days, unless the person had a certificate from his county of residence showing that he had paid his levy for the last year. Exceptions were made for those who had come into the state after the levy had been paid or who were servants. If one did hire such a person for more than two days, the fine was two dollars to be recovered with costs before any justice of the peace of the county where the offense was committed. The money resulting from the fines was to be used to lessen the county levy. Any tithable who offered himself for hire without a certificate was subject to the same penalties.[4] This part of the act was essentially the same as the Virginia act of 1748.

The administration of this early act was vested in the justices of the peace, and the sheriffs and constables were to give the justices information on the vagrants, and disorderly and wandering persons. Grand jurors were also to be responsible for giving information on suspected vagrants. The county court could then direct a justice to issue a warrant to bring these suspected

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[1] Ibid., sec. 2.
[2] Ibid., sec. 4.
[3] Ibid., sec. 3.
[4] Ibid., sec. 6.

persons before the court. If, after an examination, the suspects proved to be vagrants, then the same steps were to be taken as in other cases. It was the duty of the justices of the counties where "A. B. C." or "E. O." tables were found to issue a warrant to the sheriff or constable to burn or destroy such tables.[1] This was the basic vagrancy law of Kentucky. It was not changed fundamentally until the middle of the nineteenth century.

In 1824, a case went up to the Court of Appeals concerning the right of a sheriff to accept a bond as payment for the services of a vagrant who had been hired out. Zachariah Davenport was declared to be a vagrant by the Whitley County Court. The sheriff was ordered to hire him out for seven months. Gatliff was the highest bidder at $42.20, but the sheriff, instead of accepting money, took a bond with security on the condition that the $42.20 was to be paid in seven months. After seven months, the bond was returned by the sheriff to the Whitley County Court, and in pursuance to an order of that court, made after seven months had elapsed, a scire facias was issued against Gatliff. Judgment was later rendered for the $42.20 in favor of the Commonwealth. The Court of Appeals held that the bond would not authorize a proceeding against Gatliff by scire facias. The sheriff did not have authority to accept the bonds; therefore they did not create a debt of record.[2]

The operation of the vagrancy law in the early thirties of the nineteenth century has been vividly described in a collection of old Kentucky tales. At twelve o'clock noon, on a summer day in 1833, old King Solomon was sold by the sheriff in Lexington to the "highes' biddah." He was described as able-bodied but lazy, without visible property or means of support, "an' of dissolute habits." He was therefore adjudged guilty of high "misdemeanahs, an' was to be sole into labah foh a twelve month."[3] It was difficult to get the members of the audience to bid, and they jokingly made such remarks as: "he ain't wuth his victuals," "buy 'im foh 'is rags," and "buy 'im foh 'is scalp." Finally the

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[1] Ibid., sec. 7.

[2] Gatliff v. the Commonwealth, 5 Littell's Reports (Ky.), 166 (1824).

[3] James Lane Allen, Flute and Violin and Other Kentucky Tales and Romances (New York: Harper and Bros., 1891), p. 68.

sheriff said,

> You're runnin' the price in the wrong direction--down, not up. The law requires that he be sole to the highes' biddah, not the lowes'. As loyal citizens, uphole the Constitution of the Commonwealth of Kentucky an' make me an offah; the man is really a great bargain. In the first place, he would cos' his ownah little or nothin', because, as you see, he keeps himself in cigahs an' clo'es; then, his main article of diet is whiskey--a supply of which he always has on han'. He don't even need a bed, foh you know he sleeps jus' as well on any doohstep; noh a chair, foh he prefers to sit roun' on the curb-stones.[1]

In 1834, the mayors and trustees of the towns were authorized to take action against the free persons of color who were residents of a town or city, but who were keeping disorderly houses, harboring runaway slaves, loitering, or engaged in a questionable means of support. A summons was to be issued by the mayor or trustees and directed to any constable or peace officer of the county.[2] The trial was to be before the mayor or trustees, and the constable was to summon the jury. The defendant was to have the same right of challenge as in the civil cases, and the hearing was to be presided over by the mayor or by at least three trustees.[3]

If a person were found guilty of vagrancy, the mayor or trustees could take him into custody and hire him out at public auction to the highest bidder for not more than three months.[4] The hirer was to receive the services of the free person of color, but he was to furnish good food, lodging, and clothing and he was not to remove the colored person outside the county.[5] If the free persons of color lived outside the towns, the justices of the peace were given jurisdiction. In the towns, the money received from the hire was to be used for the defendant's family, to defray the city debts, or for the improvement of the streets; but, in the county, the money was to be used for the care of the defendant's family or to reduce the county levy.[6]

A new act of 1839 was designed to prevent the increase in the number of vagrants and idle and disorderly persons. It amended

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[1] Ibid., p. 70.

[2] Acts, February 24, 1834, chap. 558, sec. 1.

[3] Ibid., secs. 2-3.

[4] Ibid., sec. 4.

[5] Ibid., sec. 5.

[6] Ibid., sec. 6.

the act of December 15, 1795, in that the jurisdiction over vagrants was taken from the county courts and given to the circuit courts.[1] No one was to be tried as a vagrant until he had been indicted by a grand jury. It was the duty of the justices of the peace before whom the vagrant was brought to prepare the evidence and obtain the witnesses for the next circuit court, as in felony cases.[2] When a vagrant was indicted, the circuit court was to issue a writ for apprehending him, but the vagrant might avail himself of bail, which was set at one hundred dollars. The trials were to be the same as those for high misdemeanors.[3] The important thing about this act was that if the jury found a person to be a vagrant, it was to determine the period for which he was to be bound out. It was the duty of the court to make the contract, or ask the sheriff to sell the vagrant to the highest bidder for the time specified by the jury.[4]

In 1852, the legislature provided that all vagrants were to be indicted by the grand jury of the county where they were found. After being apprehended, they might be released on bail.[5] Vagrants could be arrested by warrants of a justice of the peace based on his own knowledge, or on information received under oath. The warrants were directed to any constable, sheriff, or other officer. The warrant and the prisoner were to be returned to the justice who issued the warrant, to another justice, the police judge, or the judge of the county court. If the officer to whom the return was made believed the person guilty of vagrancy, the vagrant was to be committed to jail while awaiting trial before the circuit court of the county, or he was to be released on bond.[6]

Those who were indicted for vagrancy were given jury tri-

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[1] Ibid., February 14, 1839, chap. 1207, sec. 1.

[2] Ibid., sec. 2.

[3] Ibid., sec. 3. Nothing in this act was to conflict with the laws of the Louisville Police Court with respect to its jurisdiction over vagrants.

[4] Ibid., sec. 4.

[5] Ibid., January 7, 1852, chap. 358, chap. lvi, sec. 2.

[6] Ibid., sec. 3.

als. If they were guilty, and over twenty-one years of age, the jury could designate the length of time they were to be bound out or sold into servitude providing the period was for not more than twelve months. If the vagrant were a minor, he was to be bound out as an apprentice until he was twenty-one years of age.[1]

With the money received from a vagrant who was hired out, the sheriff was to pay the fees and expenses of prosecution, then the debts of the vagrant, and the remainder was to go to his wife and children. If there were no debts, no wife, nor any children, then the money earned by the vagrant was to be paid to him at the end of his service. If he had a wife and family living in Kentucky, he could be released on bond with the understanding that he would return to them and take up an "honest calling for their support."[2] All persons who took or bought a vagrant were given the same rights and powers as masters of servants or apprentices.[3]

Other provisions for the repression of vagrancy appeared in the acts governing the early towns during the first half of the nineteenth century. In 1810, the trustees of Frankfort were given authority to act in regard to the vagrant free negroes, mulattoes, and persons of color. This act included those who had no means of support, the disorderly and riotous, and those who kept disorderly or riotous houses. The trustees could apprehend them, commit them to jail, or release them on bail to appear at the next meeting of the county court. The court might discharge them or order them to be hired out by the sheriff to the highest bidder for not more than one month. The money obtained from the hire was to go into the town treasury.[4]

An act of 1812 gave permission to the trustees of Frankfort to appoint a night watchman who could arrest anyone who acted suspiciously or disorderly.[5] If a free negro, mulatto, or person of color were in the town without any means of support, or if they were disorderly or riotous, the trustees could issue an order committing them to jail or release them on bail until the next term

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[1] Ibid., secs. 4-5. [2] Ibid., sec. 6.

[3] Ibid., sec. 8. These new provisions did not change the law with respect to the jurisdiction of the Louisville City Court, or the courts of any other city or town.

[4] Ibid., January 27, 1810, chap. 149, sec. 2.

[5] Ibid., February 1, 1812, chap. 364, sec. 9.

of the county court. The court could discharge the case or order the accused to be hired out to the highest bidder for a period not exceeding one month.[1]

In 1835, the chairman and the board of trustees were authorized to make further provision for the handling of vagrants. They could establish a workhouse, appoint the watchmen and other officials, apprehend the offenders, and have them taken before the chairman of the board of trustees to be dealt with according to the laws of the town.[2]

By the act of 1835, vagrants were to be given a jury trial before the chairman of the Frankfort board of trustees, and the procedure was to be the same as in the circuit courts. If they were convicted, they might be sentenced to labor in the workhouse for a period of not less than three nor more than six months.[3] The workhouse was for the mendicants, vagrants, and all others committed by the justices of the peace, by juries, or by the chairman of the board of trustees. The offenses for which a person could be sentenced to the workhouse included breaches of the peace, riots, routs, and unlawful assemblies, or any offense against the by-laws and ordinances of the town. All were committed to the workhouse by warrants stating the length of their sentence. They could be discharged by the chairman of the board of trustees or by the Governor of the Commonwealth if either thought that their time should be shortened.[4]

In 1839, there were a few additional changes made in Frankfort's vagrancy law. Under this new act it was provided that only the police judge or a justice of the peace of the town could issue orders for commitment to the workhouse, while the commitments in 1835 included those made by the chairman of the board of trustees and the juries. The police judge could order anyone in the workhouse to be put to hard labor, and be discharged only after he had served his sentence.[5]

The mayor and council of Lexington were given authority, in 1831, to appoint city watchmen who were to conserve the peace,

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[1] Ibid., sec. 21.

[2] Ibid., February 28, 1835, chap. 880, sec. 12.

[3] Ibid., sec. 14. [4] Ibid., sec. 13.

[5] Ibid., February 16, 1839, chap. 1225, sec. 13.

apprehend felons, gamblers, rioters, breakers or disturbers of the peace, vagrants, and persons of evil fame and of riotous and disorderly conduct. These persons, with the exception of vagrants, were to be brought before the mayor or a justice of the peace where they were to be dealt with according to law.[1] When vagrants were apprehended by the watchmen, the circuit court had jurisdiction. If the vagrants were convicted by a jury, they could be sentenced to labor in the workhouse for a period of not less than three, nor more than six months, as determined by a jury.[2]

The mayor and council were authorized to build a workhouse and poorhouse. The workhouse section was to be used for the confinement of beggars, vagrants, and disturbers of the peace or petty offenders who were committed by the mayor or the justices of the peace within the city. All were committed to the workhouse by a warrant of the mayor or a justice of the peace within the city, and put to work. They were discharged by the overseer after having served their sentence, or by the mayor for good behavior. The combined poorhouse-workhouse was under the control and direction of the mayor and councilmen who made all the rules and regulations for its operation.[3]

Three years later, in 1834, the mayor of Lexington was given the same jurisdiction as the circuit courts with reference to the vagrants in the city. The city marshal had the same authority as the sheriff, and the mayor could summon and impanel jurors, also summon and compel the attendance of witnesses.[4]

Eight years later, in 1842, commitments to the workhouse were by warrants issued by the justices of the peace within the city or by the Lexington City Court.[5] The City Court had been established in 1836.[6] Discharges from the workhouse were to be made only by the overseer after the persons had served their sentences. The mayor no longer had authority to make commitments nor to discharge for good behavior those already committed.

There were no further changes made in the methods for

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[1] Ibid., December 7, 1831, chap. 633, sec. 9.

[2] Ibid., sec. 14. [3] Ibid., sec. 13.

[4] Ibid., February 24, 1834, chap. 508, sec. 1.

[5] Ibid., February 25, 1842, chap. 340, sec. 33.

[6] Ibid., December 14, 1836, chap. 1, secs. 4-5.

dealing with the vagrants in Lexington until 1850, when the City Court was given complete jurisdiction over all these cases within the city. When vagrants were apprehended, they were taken before the City Court instead of before the mayor or trustees as provided by the earlier acts. If a person were convicted of vagrancy, the City Court could sentence him to the workhouse for not less than three, nor more than six months, as determined by a jury trial.[1] By the same act the mayor and council were again authorized to build a poorhouse and workhouse, the latter to be a separate part of the institution in which beggars, vagrants, and those sentenced for short periods by the City Court were to be confined. The provision was almost identical with that of the acts of 1831 and 1842 except that the City Court issued all the warrants for commitment to the workhouse, and discharges were made only by the overseer of the institution after the offenders had served their sentences.[2]

The people of Louisville, like those of Lexington and Frankfort, found it necessary to do something about the problem of vagrancy during the early part of the nineteenth century. In 1828, the mayor and council were authorized to employ watchmen who were to conserve the peace, and apprehend all felons, gamblers, rioters, peace breakers, vagrants, and persons of evil fame and of riotous and disorderly conduct. The watchmen were to bring them, vagrants excepted, before the mayor or a justice of the peace where they might be dealt with according to the law. If they were apprehended in the night, they were placed in the watch house until morning.[3] By the same act, the Circuit Court of Jefferson County was given specific jurisdiction over the vagrants within the city. If convicted after a jury trial, they were sentenced to labor in the workhouse for a period of from three to six months as determined by a jury.[4]

Since reference has been made to the commitment of vagrants to the workhouse, it should be indicated that the mayor and council were empowered to build a poorhouse and workhouse similar to

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[1] Ibid., December 21, 1850, Vol. II, chap. 107, sec. 67.

[2] Ibid., sec. 36.

[3] Ibid., February 13, 1828, chap. 172, sec. 7.

[4] Ibid., sec. 13.

those which had been provided for other towns.

Five years later, in 1833, the mayor of Louisville was given the same authority, within the city, for the apprehension and trial of vagrants, as the justices of the peace and the county courts. Anyone who was convicted by a jury trial before the mayor could be sentenced to hard labor in the workhouse or on the city streets. The sentences were to be not less than six nor more than twelve months, as determined by the jury.[1] A year later, in 1834, the mayor and council were authorized to commit to the workhouse all those who had been maintained by the city but who had formerly been committed to the Jefferson County Jail.[2]

A police court was established in Louisville in 1836, and the mayor's court was abolished.[3] The judge of the new court, called a City Court, was to be appointed as were the other judicial officers of the state.[4] At the same time the responsibilities of the mayor were increased, and he was made superintendent of the city workhouse, prison, and hospital. The mayor and council could appoint annually the keeper of the poorhouse and workhouse, but the appointees were subject to removal by the council.[5]

Two years later, in 1838, the question was raised whether or not the marshall of the Louisville City Court had a right to take recognizance of a vagrant. In this case, by a writ of error, an attempt was made to reverse the judgment of the Louisville City Court against Frederick Frishe as surety for John Rodes in a recognizance acknowledged by them before the marshall of the court for the appearance of Rodes on a vagrancy charge. The Court of Appeals noted that the law of 1795 provided that the county court was to direct the justices of the peace of the county to issue a warrant to bring the suspected persons before them. If, upon an examination, it appeared that the person was a vagrant, he was to be recognized to the next session of the county court or committed to jail. The city judge of Louisville had, with reference to vagrants, all the authority vested in the circuit courts and justices of the peace, and he should have had Rodes brought before

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[1] Ibid., February 1, 1833, chap. 204, sec. 15

[2] Ibid., February 22, 1834, chap. 460.

[3] Ibid., February 22, 1836, chap. 257, sec. 1.

[4] Ibid., sec. 2. [5] Ibid., secs. 19-20.

himself when he could have committed, recognized, or discharged him. He had no right to delegate that authority to the marshall.[1]

In 1851, the council was empowered to build a workhouse to confine those committed by the city court, including beggars, vagrants, bawds, bawdy housekeepers, bail defaulters, suspected felons, and others. All able-bodied persons who were sent to the workhouse were to be put to work unless they could pay twenty cents a day for their own maintenance. The general council made all the ordinances for the government and management of the workhouse.[2]

When Hickman (Mills Point) was a rapidly growing town in the early forties, and had a thriving trade, the trustees were authorized to make provision for many services such as public markets, schools or seminaries, police office or town-house, watch-houses, hospitals, burial grounds, poorhouses, workhouses, fire engines, public squares, cisterns, wells, pumps, aqueducts, streets, lanes, alleys, lamps, gas works, docks, and wharves.[3] The town marshall was given the authority to see that the laws were enforced with reference to nuisances, obstructions, encumbrances, vagrancy, public peace, and safety.[4]

When the powers of the city council of Hickman were expanded in 1854, it was given authority to care for the vagrants in the workhouse. The council could build and appoint suitable managers for a poorhouse, workhouse, watch-house, house of correction, and house of refuge. Commitments to the workhouse were made by the justices of the peace within the city or by the City Court, but this act did specify that the warrants had to indicate the length of sentence.[5]

Additional provision was also made to give further responsibility to the city marshall, policemen, and watchmen to sup-

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[1] Frishe v. The Commonwealth, 6 Dana's Reports (Ky.), 317 (1838).

[2] Acts, March 24, 1851, Vol. II, chap. 692, Art. VIII, sec. 8.

[3] Ibid., February 18, 1841, chap. 362, sec. 13.

[4] Ibid., sec. 19.

[5] Ibid., March 10, 1854, Vol. II, chap. 920, Art. II, sec. 10.

press riots, routs, unlawful assemblies, and disturbances of the peace. They were to apprehend all felons, common gamblers, rioters, breakers or disturbers of the peace, night-walkers, vagrants, and persons of evil fame and of riotous and disorderly conduct. If they were apprehended at night, they were to be kept in the watch-house until morning when they were to be taken before the City Court or a justice of the peace to be dealt with according to law.[1]

In 1834, the circuit court of Campbell County, in which Covington was located, was given jurisdiction over the vagrants within the city. If they were convicted by a jury trial, they were to be placed in the workhouse for a period of not less than three, nor more than six months of labor.[2] The same authority for the establishment of a poorhouse-workhouse was extended to the mayor and councilmen as had been given to Lexington in 1831.[3]

Several years later, in 1850, the city marshall of Covington was made the chief of police, and his responsibilities included the suppression of vagrancy within the city. The chief of police, his assistants, policemen, and watchmen were to suppress riots, routs, unlawful assemblies, disturbances and breaches of the peace. They could apprehend felons, common gamblers, rioters, breakers or disturbers of the peace, night-walkers, vagrants, and persons of evil fame and of riotous and disorderly conduct. These persons could be apprehended without a warrant and brought before the mayor's court or a justice of the peace to be dealt with according to law. If apprehended at night, they were placed in the watch-house until morning.[4] The city council was authorized to provide for a poorhouse, watch-house, workhouse, house of correction, and a house of refuge. The management and use of the poorhouse-workhouse was the same as provided for Lexington in 1831, except that commitments to the workhouse were to be made by the justices of the city or the mayor's court. Discharges were to be made only at the

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[1] Ibid., Art. IV, sec. 1.

[2] Ibid., February 24, 1834, chap. 505, sec. 12.

[3] It should be noted that it was not unusual for the legislature to make use of an already existing statute if the provisions of a new statute were the same as an earlier one. See above,

[4] Acts, March 2, 1850, chap. 237, Art. IV, sec. 1.

expiration of sentence, but all warrants were to specify the length of the sentence.[1]

In Georgetown, in 1834, the chairman and the board of trustees were given authority to establish a workhouse which was to be used for the common mendicants, vagrants, and all others confined by the justices of the peace of the town, chairman of the board of trustees, or by jury. The offenses for which a person could be committed to the workhouse included breaches of the peace, riots, routs, unlawful assemblies, or any offense against the by-laws or ordinances of the town. The offenders were to be committed by warrant, put to work, and were to serve their entire sentences unless discharged by the chairman of the board of trustees or by the Governor of the Commonwealth.[2] The circuit court of Scott County was given specific jurisdiction over the vagrants within the city. If they were convicted by a jury trial, they could be sent to the workhouse for not less than one month, nor more than six months.[3]

Several years later, in 1847, the chairman and the board of trustees were again empowered to establish a watch-house and workhouse, appoint watchmen and superintendents, and bring all offenders before the proper tribunal to be dealt with according to law.[4]

As early as 1825, the trustees of Bowling Green were authorized to organize a town patrol, which was to consist of white male citizens who were residents, between eighteen and fifty years of age, and who were living within the town or within two hundred yards of the city limits. They were to watch and patrol the town and suburbs at night in order to guard against fire, to suppress disorderly conduct, and to apprehend the slaves or others who were not able to give a satisfactory account of themselves. Anyone who was apprehended by the guards was not to be detained later than nine o'clock the following morning without due process of law.[5] The captains of the guard could inflict any number of stripes, not

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[1] Ibid., Art. II, sec. 14.

[2] Ibid., February 22, 1834, chap. 442, sec. 13.

[3] Ibid., sec. 14.

[4] Ibid., March 1, 1847, chap. 485, sec. 15.

[5] Ibid., December 17, 1825, chap. 65, sec. 1.

exceeding ten, on any slave who was found off the premises of his master after ten o'clock at night, provided that he did not have a pass from his master or a good excuse. If the captain did not want to whip the slave, he could imprison him until the sun was one hour high the following morning.[1]

Eleven years later, in 1836, the chairman and trustees of Bowling Green were empowered to build a workhouse and a poorhouse for the vagrants and others. The details of this act were the same as those for Frankfort in 1835.[2]

In 1843, the legislature authorized the establishment of a workhouse where vagrants and all other persons who were sentenced for short periods might be committed by the justices of the peace of the town or by the Bowling Green Police Court. These cases included breaches of disturbances of the peace and petty offenses. All who were committed to the workhouse by warrants of the Bowling Green Police Court or the justices of the peace within the city were put to work. They were discharged by the overseer when they had served their sentences.[3] Again in 1856 the legislature made the same provision for Bowling Green as that which had been provided by the act of 1843.[4]

The legislature, during the second and third quarters of the nineteenth century, also made many other provisions for the handling of vagrants in other towns.

In 1833, the legislature gave authority to the mayor and council of Maysville to appoint watchmen who were to bring the offenders before the mayor or some justice of the peace within the city where they were to be dealt with according to law.[5] Similarly, watchmen were appointed in Newport in 1834,[6] and the circuit court of Campbell County was given jurisdiction over all the vagrants within the city. After a jury trial, the circuit court could sentence them to the workhouse for not

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[1] Ibid., sec. 2.

[2] Ibid., February 29, 1836, chap. 330, sec. 6.

[3] Ibid., January 21, 1843, chap. 39, sec. 26.

[4] Ibid., March 5, 1856, Vol. I, chap. 334, sec. 17.

[5] Ibid., January 31, 1833, chap. 197, sec. 9.

[6] Ibid., February 24, 1834, chap. 529, sec. 9.

more than six months as determined by a jury.[1] The mayor and council were empowered to build a workhouse, but until it was completed, the city jail was to be used. Beggars, vagrants, and persons sentenced for short periods by the justices of the peace of the city or the mayor were to be confined in the workhouse. All were to be put to work on the city streets, alleys, or public works, and discharged after having completed their sentences.[2]

In 1835, the trustees of Hopkinsville were given authority to make rules and regulations concerning the beggars and vagrants who were loitering in the town.[3]

The chairman and the board of trustees of Paducah were authorized to establish a watch-house and workhouse in 1838.[4] The workhouse was for the confinement of the mendicants, vagrants, and others. All were to be put to work, after having been committed on warrants stating the length of their sentences, but the Governor could release them for good behavior.[5] In 1856, the city council was empowered to build a workhouse for those committed by the city court. Beggars, vagrants, bawds, bawdy housekeepers, bail defaulters, suspected felons, and others were to be confined in the workhouse. All the able-bodied were to be put to work until discharged unless they paid fifty cents a day for their maintenance.[6] In the vagrancy cases, the city court had concurrent jurisdiction with the McCracken Circuit Court, and could sentence the vagrants to the workhouse for six months of labor.[7]

In 1838, the trustees of Bardstown were also authorized to purchase not more than one acre of land within the city upon which to build a workhouse or watch-house. The trustees were to make the rules and regulations for the government of the workhouse, appoint the necessary officers, and establish their salaries.[8]

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[1] Ibid., sec. 11. [2] Ibid., sec. 10.

[3] Ibid., February 3, 1835, chap. 633, sec. 1.

[4] Ibid., February 13, 1838, chap. 804, sec. 12.

[5] Ibid., sec. 13.

[6] Ibid., March 10, 1856, Vol. II, chap. 629, Art. VII, sec. 5.

[7] Ibid., Art. IV, sec. 2.

[8] Ibid., February 12, 1838, chap. 800, sec. 3.

Similar provision was made, in 1839, for the building of workhouses and watch-houses in Paris and Elizabethtown. The trustees were also to appoint the superintendents and watchmen.[1] However, an additional act, in 1847, authorized the trustees of Elizabethtown to obtain not less than one acre of land within the city upon which to build a workhouse, make the rules and regulations, appoint the officers, and establish their salaries.[2] Three years later, in 1850, the trustees were empowered to purchase not more than one acre of land within the city, or not more than ten acres within a mile of the city, on which to build a workhouse. It was to be administered by the trustees, but the offices created by the trustees were to be filled by persons elected by the voters of the town.[3]

The chairman and the board of trustees of Versailles were empowered, in 1840, to build a workhouse for the mendicants, vagrants, and others who were committed by the justices of the peace, police judge, or juries within the town. All were to be put to work under the direction of the superintendent of the workhouse, but the Governor could discharge them before the end of their sentences if he thought it desirable.[4]

The board of trustees of Henderson was empowered, in 1842, to build a watch-house and workhouse to be used for the punishment of the violators of the laws of the town and the state. These institutions were to be regulated by ordinances not inconsistent with the laws and Constitution of the state.[5] Several years later, in 1860, the Henderson City Council was again authorized to build a workhouse for the confinement of the beggars, vagrants, bawds, bawdy housekeepers, bail defaulters, suspected felons, and others who were committed by the City Court. Those who were confined for short terms for offenses against the city might work out the sums they had to pay at the rate of seventy-five cents a day. All others were to be put to work until discharged unless they paid

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[1] Ibid., February 20, 1839, chap. 1279, sec. 8.

[2] Ibid., March 1, 1847, chap. 435, sec. 3.

[3] Ibid., February 2, 1850, chap. 93, sec. 3.

[4] Ibid., February 20, 1840, chap. 406, sec. 14.

[5] Ibid., February 24, 1842, chap. 325, sec. 5.

twenty-five cents a day for their maintenance.[1]

In 1843, the chairman of the joint board of trustees of Smithland, and the two boards of trustees (there was one board for each of two wards) had authority, either jointly or separately, to establish a watch-house and workhouse, appoint the watchmen, and officers to superintend the institutions.[2]

The trustees of Danville were authorized, in 1846, to build a workhouse and watch-house, and appoint the watchmen and the superintendents for the institutions. Those in the workhouse were to be put to work, and discharged when their sentences had been served.[3] A similar provision was made for Shelbyville in the same year.[4]

Ten years later, in 1856, the trustees of Danville were again empowered to build a workhouse. The vagrants of the town could be committed by the police judge and put to work for not more than thirty days.[5]

The town of Augusta, in 1850, was merely given authority to appoint watchmen for day or night service. When the vagrants, among others, were apprehended, they were taken before the mayor or a justice of the peace to be dealt with according to law.[6]

Portland's trustees were empowered to build a workhouse in 1850. All who were confined in the workhouse, including vagrants, were to be put to work after being committed on a warrant of the police judge. They were discharged by the superintendent after having completed their sentences.[7]

A watch-house and workhouse, in 1850, were to be built by the trustees of Cynthiana. All who were committed were to be put at hard labor, and released when they had served their sentences. Commitments were made by the police judge or a justice of the

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[1] Ibid., February 25, 1860, Vol. II, chap. 528, secs. 1-2.

[2] Ibid., March 8, 1843, chap. 251, sec. 10.

[3] Ibid., February 16, 1846, chap. 189, sec. 13.

[4] Ibid., February 21, 1846, chap. 297, sec. 11.

[5] Ibid., March 4, 1856, Vol. I, chap. 313, sec. 4.

[6] Ibid., February 28, 1850, chap. 194, sec. 8.

[7] Ibid., March 2, 1850, chap. 238, sec. 8.

peace of the town.[1]

In 1856, the trustees of Harrodsburg were authorized to build a workhouse and watch-house, and appoint the watchmen and officers to superintend the institutions. The watchmen were to apprehend all offenders and bring them before the proper court to be dealt with according to law. The offenses for which a person could be committed to the workhouse included breaches of the peace, riots, affrays, unlawful assemblies, vagrancy, mendicancy, or offenses against the by-laws or ordinances of the town. Those in the workhouse were to be put to work and discharged at the expiration of their sentences.[2]

Two years later, 1858, the trustees of Hopkinsville were given the same authority as the trustees of Harrodsburg with reference to the establishment of a watch-house and workhouse, the appointment of watchmen and other necessary officers.[3]

In 1860, the city council of Florence was given authority to build a watch-house, workhouse, and a house of correction. Beggars, vagrants, and those sentenced for short periods were to be placed in the workhouse by the justices of the peace of the town or by the police court. All were committed to the workhouse by warrants issued by the police court or by the justices of the peace, and they were released by the overseer of the institution after they had served their sentences.[4]

In the same year, 1860, the City Council of Columbus was empowered to build a workhouse. Anyone could be committed for non-payment of fines and costs, misdemeanors, or breaches of the city ordinances. Those in the workhouse were to remain until their fines were paid, but for a period of not longer than six months for any one offense.[5] They were to work for the city for not more than ten hours a day, and be given a wage, determined by the council, which was to be used to pay their fines and costs.[6]

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[1] Ibid., March 7, 1850, chap. 571, sec. 11.

[2] Ibid., March 10, 1856, Vol. II, chap. 718, sec. 10.

[3] Ibid., February 11, 1858, Vol. I, chap. 339, sec. 13.

[4] Ibid., February 17, 1860, Vol. I, chap. 293, sec. 10.

[5] Ibid., February 18, 1860, Vol. I, chap. 310, sec. 7.

[6] Ibid., sec. 8.

In concluding this discussion of vagrancy, brief mention needs to be made of the problem of destitute gypsies. The legislature found it necessary, in 1860, to take action to rid the state of the hordes of gypsies who were "roaming about" without any fixed habitation or lawful means of earning a livelihood. After complaint was made by a citizen, a county judge, justice of the peace, police judge, or mayor of any town or city could issue a warrant for the arrest of a gypsy and bring him before the officer for a trial.[1] If, after a hearing, it seemed that the gypsy was guilty of vagrancy, and was unable to prove that he had a lawful means of maintaining himself and his dependents, he could be fined not more than fifty dollars and compelled to give security for his good behavior in the future. If he could not pay the fine nor give security, then he could be committed to the county jail where he could work out his fine at the rate of two dollars a day.[2]

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[1] Ibid., March 31, 1860, Vol. I, chap. 1257, sec. 1.

[2] Ibid., sec. 2.

CHAPTER VI

SPECIAL MEASURES IN BEHALF OF SELECTED FORMS OF DISTRESS

During the first half of the nineteenth century the vacant and unappropriated lands of the state were widely used by the legislature for poor relief purposes. Such provision seemed to represent the early stages of categorical relief in which the state, rather than the local communities, became responsible for meeting widespread problems of poverty by making free grants of land. The two principal categories of persons receiving such relief were soldiers, or their families, and widows, but other groups also received this type of assistance. In order to give greater clarity to this discussion, these groups are considered separately.

Relief of Indigent Soldiers and Their Families

Land grants to indigent soldiers and their families or to the widows and children of soldiers, were only one of several means by which Kentucky attempted to meet its responsibilities toward those who had given military service to the State. Other measures of relief included the purchase of artificial arms and hands; the waiving of peddler's fees, tavern license taxes, and clerk fees; county cash allowances, the relief of destitute wives and families of soldiers in a few counties following the Civil War, and tax relief. These special relief measures of the nineteenth century were followed by soldiers' allowances of the twentieth century, but this subject has been discussed separately.[1]

With reference to the land grants of the early nineteenth century, the following cases are presented for illustrative purposes.

Robert Campbell, of Logan County, was disabled while in military service. In 1798, he was indigent, nearly deaf, and had

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[1] See below, pp. 116-22.

a large family of young and helpless children. The legislature exempted him from the payment of the state price on two hundred acres of land, and the register of the land office was directed to issue a life grant. After the death of Campbell, the land was to be vested in his heirs in fee simple but subject to his wife's dower.[1]

Andrew Parks, in 1812, was old, indigent, and infirm. He had spent much of his life in the military service and had only two hundred acres of third rate land on which to support his family. In order to aid him, the legislature waived the unpaid remainder of the state price, and instructed the register of the land office to issue a patent. He could not sell or dispose of the land, and, upon his death, it was to pass to his lawful heirs.[2]

William Simpson, of Lincoln County, was a volunteer in the expedition to Canada under Governor Shelby. Simpson died while in service and his wife died soon after, leaving ten small children in indigent circumstances. The legislature, in 1815, granted each child one hundred acres of waste and unappropriated land. The surveyor of the county where the land was located was instructed to survey the grants and make the plats and certificates. The register of the land office was to issue the patents.[3]

Catherine Cook, of Knox County, was a widow whose husband died in the war of 1812. In 1818, she was very poor and had a large family to maintain. The legislature asked the register of the land office to issue a warrant for one hundred acres of land to be located anywhere in the state. A grant was to follow as soon as a plat and certificate were received.[4]

In the same year, 1818, Nancy Knott, widow of Jeremiah Knott who was killed at New Orleans, was granted two hundred acres of free land.[5]

Nancy Rainey, whose husband was killed in the War of 1812, was indigent and had a large family to support. The legislature, in 1818, also granted her two hundred acres of free land to be located in any county of the state. The register of the land office was to make a grant after receiving a plat and certificate and she was to enjoy the land during her natural life, after which it was to descend to the children.[6]

John Jacobs, who was incapacitated in the Revolutionary War, was an indigent and unable, in 1818, to support his family. The legislature gave him two hundred acres of free land in any part of the state, and after he had produced a plat and certifi-

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[1] Acts, December 7, 1798, chap. 20.

[2] Ibid., January 1, 1812, chap. 303, sec. 1.

[3] Ibid., February 10, 1816, chap. 389, secs. 1-2.

[4] Ibid., January 28, 1818, chap. 207, sec. 1.

[5] Ibid., sec. 2.

[6] Ibid., sec. 6.

cate, the register of the land office was to issue a patent.[1]

One might go on indefinitely citing similar cases, but a statement in tabular form is presented in Appendix I.[2]

As previously stated, the use of vacant and unappropriated state land was not the only provision made for indigent soldiers and their families. For instance, there was one case in which the legislature appropriated funds for the purchase of artificial arms and hands.

William Gracy, of Covington, had been a soldier in the Mexican War. Through a premature discharge of a cannon, he had lost both arms. He was not able to buy a pair of artificial arms and hands, neither were his relatives able to assist him. In 1851, the legislature gave him two hundred and fifty dollars for the purchase of the artificial members.[3]

Some other unusual provisions were indicated in the following cases. For example:

Thomas Robertson, of Henry County, was a regular soldier in the War of 1812. He lost his left arm at the Battle of Mississinaway, and was unable, in 1820, to support his wife and small children although he had a small licensed tavern. In order to aid him, the legislature removed forever the tax on his tavern license, but he was not exempted from the penalties with reference to disorderly houses.[4]

John B. Meredith, of Woodford County, had been a volunteer soldier in the Mexican War. His health was very poor, and he was finally forced to return home on October 14, 1846. While returning home he broke his arm by falling into the hold of a vessel. He had not regained the use of his arm. In 1847, he was unable to support his wife and children; therefore, the legislature permitted him to peddle goods, wares, and merchandise without a license for one year in Woodford and the adjoining counties.[5]

Lewis G. Garrett, of Clarke County, had been a soldier in the Civil War. He had lost his right arm and was unable to support himself; therefore, the legislature, in 1865, authorized him to peddle without a license for two years in Clarke, Montgomery, and Powell Counties.[6]

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[1] Ibid., January 30, 1818, chap. 222, sec. 2.

[2] See below, pp. 155-56.

[3] Acts, January 30, 1851, Vol. II, chap. 190.

[4] Ibid., December 13, 1820, chap. 103, secs. 1-2.

[5] Ibid., March 1, 1847, chap. 516.

[6] Ibid., February 7, 1865, chap. 850, sec. 1.

Joseph Morehead, a disabled soldier of the Civil War, was authorized, in 1867, to peddle books and maps without a license anywhere in the State.[1]

Martin S. Price, of Logan County, had been a soldier in the War of 1812. He was seventy-eight years old, deaf, ill, and blind, so that the legislature, in 1871, waived all his future state taxes.[2]

Other kinds of relief granted to the soldiers and their families included the waiving of clerks' fees and taxes on various written instruments which were necessary to establish compensatory claims against the federal government. In 1831, the legislature cancelled all the clerks' fees for affixing their seal of office to written instruments, certificates, or attestations for testimonials with reference to the services of soldiers in the Revolutionary War.[3] Two years later, in 1833, the legislature waived all the fees and taxes of the clerks of the Commonwealth with respect to the service testimonials of soldiers of the Revolutionary War or the War of 1812.[4] In 1837, widows and heirs of soldiers who were entitled to pensions or land grants from the United States government were to obtain, without cost, the seals of the county clerks on all transcripts, the powers of attorney, records of marriage, heirship, and all other written documents which were necessary to substantiate their claims against the federal government.[5] Similar services were extended, in 1848, to the officers and soldiers of the Mexican War.[6]

After 1850, the clerks of the courts were not permitted to charge fees or taxes for fixing their seal of office to a written instrument which might be necessary for the testimonials of an officer or soldier of the War of 1812 or any Indian War since 1790. These testimonials might be for services, the collection of debts, or for lost, captured, or destroyed property.[7] Two months

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[1] Ibid., March 11, 1867, chap. 2101, sec. 1.

[2] Ibid., January 31, 1871, chap. 1184, sec. 1.

[3] Ibid., January 15, 1831, chap. 510.

[4] Ibid., January 30, 1833, chap. 168, secs. 1-2.

[5] Ibid., February 22, 1837, chap. 383, sec. 1.

[6] Ibid., January 12, 1848, chap. 13.

[7] Ibid., November 23, 1850, Vol. I, chap. 24.

later this act was extended to include the widows, heirs, and devisees of those cited in the last act, provided that the claimants swore that the papers were to be properly used in the prosecution of claims mentioned in the act.[1]

An act of August 22, 1862, again required the clerks to affix their seals, free of charge, to the declarations and necessary papers of soldiers, widows, heirs, and administrators in making application for bounty money, pay in arrears, extra pay, or pensions.[2] In 1864, the provisions of this act were extended to surgeon's certificates or disability papers of soldiers who were absent from their companies on sick furloughs.[3] Provision was also made to prevent judgments by default against soldiers who were in active service, but this act did not apply if the officer or soldier was on local duty in the county of residence.[4] A year later, 1865, the clerks of the county courts were instructed to keep an accurate record of the certificates and county seals affixed to pension and similar claims for widows and others against the United States. An annual report was to be made to the county court of claims, at which time an allowance could be granted to the clerk for his services.[5]

Although, after 1833, there were no further instances in which the legislature waived the payments on state land as a means to relieve destitute soldiers and their families, there were a few instances between 1839 and 1846 in which the legislature authorized the county courts to make cash allowances for this group. It is interesting to note that these allowances were granted during the period when there was rather extensive legislative authorization of county allowances for general family destitution, including the widows, blind, aged, crippled, and the sick.[6] With reference to the soldiers and their families, county allowances were granted for the following cases:

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[1] Ibid., January 21, 1851, chap. 147.

[2] Ibid., August 22, 1862, chap. 616, sec. 1.

[3] Ibid., January 23, 1864, chap. 138, sec. 1.

[4] Ibid., February 9, 1864, chap. 255, sec. 1.

[5] Ibid., June 3, 1865, chap. 1768, secs. 1-2.

[6] See above, pp. 7-9.

Matthew Cook, of Campbell County, was a blind and indigent ex-soldier. In order to aid him, the legislature instructed the county court, in 1839, to make an annual allowance not exceeding seventy dollars as long as he was a citizen of the county.[1]

William Smith, of Harrison County, had been a soldier in the Northwestern Army. He had lost his arms and legs by exposure while in service. In 1839, the legislature asked the county court of Harrison County to make provision for his support.[2]

Linchfield Sharp, of Pendleton County, was an ex-soldier who, in 1845, was in great want, unable to work, and without means of support. Since he did not want to go to the poorhouse, the county court was asked to make an annual allowance for his support and maintenance.[3]

Thomas McIntyre was an old ex-soldier and pioneer of Mercer County. In 1846, the legislature authorized the county court to appropriate not more than fifty dollars a year for his support as long as he was in need, and a resident of the county.[4]

During the period of the Civil War and the days of reconstruction, special provision was made in specific counties for the relief of destitute wives and families of soldiers. In 1862, the county judge of Bourbon County was empowered to levy a tax of not more than five cents on each one hundred dollars' worth of taxable property; the money was to be used for the relief, maintenance, and support of the wives and families of soldiers who were engaged or who might later be engaged in the United States military service. The funds were to be distributed by two bonded commissioners appointed by the county court.[5] This act was repealed in 1866, and the sheriff was instructed to turn over the funds to the county treasurer, who was to apply them on the county bonds.[6]

In 1863, the county judge of Nicholas County was authorized to levy a tax not exceeding two cents on each one hundred dollars' worth of taxable property; the funds were to be used for the care of the wives and families of soldiers who were in the service of the United States. The county judge was to distribute

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[1] Acts, December 11, 1839, chap. 5.

[2] Ibid., chap. 8.

[3] Ibid., January 29, 1845, chap. 120.

[4] Ibid., January 21, 1846, chap. 50.

[5] Ibid., August 31, 1862, chap. 646, sec. 1.

[6] Ibid., January 12, 1866, chap. 102, sec. 2.

the fund on the orders of the court.[1] This provision was amended in the same year, 1863, so that it applied only to destitute wives and families of soldiers in the service of the United States.[2]

State and county tax relief was granted to certain groups of disabled ex-soldiers in 1866. Any white person who had lost an arm or leg during his service in the United States Army or Navy and was unable to support himself and family was exempted from state and county taxes if his estate were worth less than $1,000.[3] These persons were to be heard by the county judge, who could order the clerk of the county court to issue a certificate which would release them from the payment of their taxes.[4]

Relief of Indigent Widows and Others

In addition to the use of vacant and unappropriated land for the care of soldiers and their families during the first half of the nineteenth century, the same provision was widely used for the care of dependent widows and others. Widows seemed to be given special attention by the members of the legislature, and these early land grants actually led to the enactment of a law, in 1820, which was a form of categorical assistance. In this respect, the act of 1820 resembled the widow's allowances of the twentieth century. There was no question but that the members of the legislature were particularly interested in the relief of this specific group as evidenced by the following case:

> Jincy Dodds, of Livingston County, was a very poor widow. She was a cripple and unable to pay the remainder of the state price on two hundred acres of land. The act for her relief, in 1820, stated that since the legislature "wanted to alleviate the wants of the poor," the balance of the state land price was remitted and the register of the land office was instructed to issue a patent.[5]

In 1820, the members of the legislature called attention to the fact that there were many poor widows in the state who

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[1] Ibid., March 2, 1863, chap. 981, sec. 1.

[2] Ibid., December 15, 1863, chap. 7, sec. 1.

[3] Ibid., February 2, 1866, chap. 276, sec. 1.

[4] Ibid., sec. 2.

[5] Ibid., November 23, 1820, chap. 34, sec. 1.

were destitute and had numerous children to support. There was much vacant land, and since it was thought to be a good policy to protect the poor widows and the fatherless children, provision was made whereby any widow having an estate of less than one hundred dollars in value could make application for one hundred acres of vacant land. The application was to be made in the county or circuit court of the county in which she resided, and proof of her estate was to be made in open court by the testimony of two or more credible witnesses. The auditor of public accounts was to issue a warrant to the treasurer, after the application and evidence had been entered in the court records and a certified copy of the action had been received from the clerk of the court. After the treasurer had given his quietus, the register of the land grant was to issue the warrant. The grant might be made on any vacant or unappropriated land in the state except the land west of the Tennessee River and south of Walker's Line.[1] This land which was appropriated to widows was not liable to sale by execution nor subject to tenancy by courtesy. The widow had title to it during her lifetime, but upon her death it descended to her children. If there were no children, the land reverted to the state. It was not alienable during the life of the person obtaining it.[2]

A few cases later came before the legislature which presented problems resulting from this statute.

David and Robert Griffith of Floyd County had purchased two land warrants of one hundred acres each from Margaret Cooper and Mary Dunbar who had received the land under the 1820 act for the benefit of poor widows. It was believed that the register of the land office would not issue the patents to David and Robert Griffith as the warrants were not assignable. However, the legislature arranged a valid assignment of the warrants in 1823, and asked the register of the land office to issue a patent as soon as the plats and certificates of survey had been returned.[3]

There was another case in which a widow had received her land but was still unable to support herself.

Nancy Emmett, of Russell County, was old and poor but had received a grant of one hundred acres of land under the act of

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[1] Ibid., December 21, 1820, chap. 133, sec. 1.

[2] Ibid., sec. 2.

[3] Ibid., December 11, 1823, chap. 594.

1820. In 1837, she was in need of further assistance; therefore, the legislature authorized her to sell the land and use the proceeds for her support.[1]

Although the county and circuit courts were vested with the administration of the act of 1820, provision for a few cases continued to be made by the legislature as many widows could not qualify for the grant of one hundred acres of free land. For example:

Catherine Logsden and Mrs. James Woods were widows in Muhlenburg County. They were very poor and had many children to support but could not qualify for aid under the act for the "benefit of poor widows"; therefore, the legislature, in 1822, gave each of them one hundred acres of land to be located anywhere in the state.[2]

On the other hand, while it was true that state land was largely used for the care of destitute soldiers, or their families, and widows, its use was not entirely restricted to these indigent groups, as indicated by the following cases:

John Harbert obtained a certificate and settled on two hundred acres of land in Wayne County. He was blind, poor, old, and unable to pay the state for the cost of the land. In 1803, the legislature authorized the register of the land office to issue a grant after receiving the plat and certificate of survey. However, Harbert could not sell or convey the land, and if he did not will it to someone at his death, it was to descend by the law of descents.[3]

John Lewis, of Livingston County, obtained a certificate to two hundred acres of state land in November, 1798. He was totally blind. The unpaid balance of the state price was remitted by the legislature in 1804 and the register of the land office was asked to issue a grant after receiving the plat and certificate of survey.[4]

Deacon Payne, of Henderson County, was injured in 1804 by being thrown into the furnace at Robertson's Salt Works. He was destitute and totally unable to do any kind of work. Since he had a certificate to two hundred acres of land, the legislature waived the state price, and asked the register of the land office to issue a patent.[5]

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[1] Ibid., January 5, 1837, chap. 61.

[2] Ibid., December 2, 1822, chap. 415.

[3] Ibid., December 9, 1803, chap. 52, sec. 1.

[4] Ibid., December 6, 1804, chap. 39, sec. 1.

[5] Ibid., December 15, 1804, chap. 31, sec. 1.

Dolly George, widow of William George, was left in great poverty. She was nearly blind, and had bought a small piece of land in Wayne County for which she could not make the payments. The legislature, in 1811, waived the state price and instructed the register to issue a patent as soon as a survey of the land had been returned to his office.[1]

Jesse Knighten, of Muhlenburg County, was dependent because of old age and illness. He had one hundred and ninety-eight acres of state land but was unable to pay for it. In 1812, the price was remitted, and the register of the land office was asked to issue a patent. The land was not to be sold during the beneficiary's life and was to remain after his death in the possession of his wife and children.[2]

Mary Raley, of Washington County, widow of John Michael Raley, was left an indigent. She was about fifty years of age, and had two children, Mary and William, who were both cripples. In order to provide for her, the legislature, in 1813, gave her one hundred and fifty acres of waste land. After she obtained a plat and certificate from the county surveyor, the register of the land office was to issue a patent. Upon the death of the mother, the land was to descend to the children and their heirs.[3]

John Wright, of Warren County, had a wife who was weakly, and six small children. Five of the children were deaf and dumb, and the sixth was of unsound mind. In 1814, he had little property other than one hundred acres of state land on which he had paid the first instalment. The remainder of the price was remitted by the legislature and the register of the land office was instructed to issue a patent.[4]

William Dunning, of Caldwell County, had lost his right hand and was unable to support his family. In 1819, he was given two hundred acres of land in Caldwell County, and the register of the land office was to issue a grant after receiving the plat and certificate.[5]

Catherine Amis, of Clay County, was a poor widow to whom the legislature gave fifty acres of free land in 1819. The register of the land office issued a grant after receiving the plat and certificate.[6]

Many other instances of similar legislative provision might be cited, and the cases have been arranged in a tabular

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[1] Ibid., January 18, 1811, chap. 229, secs. 1-2.

[2] Ibid., February 7, 1812, chap. 52, sec. 1.

[3] Ibid., January 16, 1813, chap. 31, secs. 1-2.

[4] Ibid., January 28, 1814, chap. 148, sec. 1.

[5] Ibid., February 9, 1819, chap. 426, sec. 1.

[6] Ibid., chap. 433, sec. 1.

statement which is found in Appendix II.[1]

In other cases, the legislature met the needs of the families by delaying the instalment payments, but these were rather exceptional cases and are presented in detail.

Christiana Tully, in 1800, was a widow with eight small children. Mr. Tully, who had a certificate of settlement for two hundred acres of land south of the Green River, was murdered by the Harps, who also destroyed much of his property. The legislature provided for her and the children by delaying the payments on the land until December, 1810.[2]

In the same year, 1800, Elizabeth Spaim, another settler on the lands south of the Green River, was ill and indigent. In order to aid her, the legislature suspended the payments on her land until December, 1810.[3]

In 1801, Josiah Young and his wife died, leaving five children with no real property and little personal property. Prior to the father's death he had settled on some vacant land for which a certificate had not been obtained. The county court of Livingston County had granted a certificate to the children for two hundred acres of land, but since they could not pay for it immediately, they were given until January 1, 1812, to make the first payment.[4]

Asa Ruby died and left his wife, Jane Ruby, and five minor children. He had obtained a certificate to two hundred acres of land south of the Green River, but had not made any payments to the state. Mrs. Ruby, in 1803, was unable to make the payments; therefore, the legislature postponed the payments, without interest, until the children became twenty-one years of age.[5] A patent to the land was to be issued as soon as the state payments were made.[6]

James Bristoe, of Adair County, whose name had been changed to Benjamin Bristoe,[7] died after receiving a certificate to one hundred acres of vacant land. He had not made any of the payments and he left his wife and nine small children without means of support. The land was subject to sale by the register of the land office, but, in 1808, the legislature delayed the sale, and suspended the payments, without interest, until the children became of age.[8]

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[1]See below, pp. 157-60.

[2]Acts, December 18, 1800, chap. 6, sec. 1.

[3]Ibid., December 17, 1800, chap. 56, sec. 1.

[4]Ibid., November 28, 1801, chap. 46, sec. 1.

[5]Ibid., December 23, 1803, chap. 45, sec. 1.

[6]Ibid., sec. 2.

[7]Ibid., January 3, 1808, chap. 5, sec. 1.

[8]Ibid., February 16, 1808, chap. 60.

Sarah Neele, of Logan County, was a widow with nine small children. The family had been reduced to extreme poverty because of the cost of medical care for the deceased husband, Thomas Neele. The legislature, in 1804, aided the family by waiving the state price and interest on two hundred acres of land until the children reached twenty-one years of age.[1]

Lastly, students of this problem will undoubtedly raise the question why none of these legislative land grants for the care of the poor was made after 1833. The explanation is to be found in the fact that authority in such cases was bestowed on the county courts.[2] After November 1, 1833, all who owned head right land were to file their land certificates with the county clerk of the counties in which they resided, and he was to make a list showing the amount which they still owed the state. These unpaid balances were to be under the administration of the county courts which were to accept money or labor for payment. If the unpaid balance was paid by labor, it was to be worked out on the roads under the direction of an overseer appointed by the court. However, the money received in lieu of labor might also be applied for the upkeep of the roads. Wages were determined by the courts, and the overseers designated the time and place of work.[3] When the remainder of the state price had been paid in money or labor, the clerk of the county court issued a quietus which would entitle the owner to a patent from the register of the land office.[4]

After 1833, cash allowances, or outdoor relief, were gradually substituted for the land grants as a means to provide for the poor. This is indicated quite clearly in the discussion of outdoor relief, the administration of which was vested in the county courts.[5] Even though this period of legislative land grants did not extend beyond 1833, it seems to be significant in that it indicated a recognition on the part of the members of the legislature of these problems of destitution and an attempt to meet them by state provision. These land grants characterized an era in Kentucky history when the legislature was attempting to do something about these problems on a state basis, in spite of the

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[1] Ibid., December 15, 1804, chap. 28, sec. 1.

[2] Ibid., January 31, 1833, chap. 192, sec. 8.

[3] Ibid., sec. 1.

[4] Ibid., sec. 4.

[5] See above, pp. 7-10.

fact that state responsibility for outdoor relief of the poor was rare in the United States until the early thirties of the twentieth century. Massachusetts was one exception to the rule, and Kentucky, prior to 1833, was another.

Although attention has been given to the relief of destitution for various groups, this discussion would not be complete unless brief mention was made of the payments for the benefit of the Chickasaw Indians. Indian relief, provided by the legislature, consisted of a few outright money grants in 1798 and 1799. The first grant, in 1798, was for one hundred dollars when the Indians were living in or near Frankfort. The money was to be divided in any way which William Trigg and Bennet Pemberton "thought best."[1] In the fall of the same year an additional appropriation of thirty dollars was made to Captain Thompson, a Chickasaw Chief, and it was to be used for the purchase of farming implements and other necessities.[2] The last grant of fifty dollars was made in 1799, and the Governor was authorized to use it in any way which he "thought best."[3]

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[1] Acts, 1798, chap. 45

[2] Ibid., December 22, 1798, chap. 74.

[3] Ibid., 1799, chap. 88.

CHAPTER VII

CATEGORICAL ASSISTANCE BEFORE THE SOCIAL SECURITY ACT

Although this discussion will be primarily concerned with soldier's, blind, aged, and mother's allowances of the twentieth century, it should be recalled that special provision had been made for the relief of some of these groups in the early part of the nineteenth century. These relief measures included the use of vacant and unappropriated state land, county cash allowances, and the waiving of peddler's fees, tavern license taxes, and clerk's fees.[1]

Soldier's Assistance

The first type of categorical assistance of the twentieth century, other than general poor relief, was that of grants to indigent and disabled Confederate Army soldiers or their widows. An act of 1912 provided that an indigent and disabled person was eligible for an allowance if he were a citizen of the United States, had resided in Kentucky since January 1, 1907, and had served one year or until the close of the year as an officer or enlisted man in the military or naval service of the Confederate states during the war, 1861 to 1865. The widows of these persons were also eligible if married prior to January 1, 1890. If anyone had been prevented from serving until the close of the war because of wounds or disease contracted while in service, his eligibility was not affected. However, if anyone had deserted or had been dishonorably discharged, he was not eligible unless he had re-enlisted or returned to the service and served a year or until the close of the war, provided that he was not prevented from doing so because of wounds or disease.[2]

No one was eligible who could support himself by manual labor, profession, trade, or craft, nor was he eligible if receiv-

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[1]See above, pp. 103-09.

[2]Acts, March 4, 1912, chap. 6, sec. 1.

ing a pension from the United States, a state, or a foreign government. Neither was one eligible if he had been gone from the state for more than a year, possessed property valued at twenty-five hundred dollars, or had a net annual income amounting to three hundred dollars. Lastly, a veteran was ineligible if his wife possessed property or means sufficient for the support of the family, or if he had provided for his support by contract or agreement for a valuable consideration. The amount of the grant was ten dollars a month to be paid out of the State Treasury.[1]

The State Pension Board was to consist of the Governor, Auditor, and Secretary of State, who were to grant or reject the applications for allowances. Their decision was final.[2] Applications were to be filed in the county court of the county where the claimant resided, and the judge was to hear testimony in open court as to the applicant's citizenship, residence, and means of support. The judge was to make a finding of the facts, and send the application to the Adjutant General with the affidavits of two physicians, or one physician and two lay witnesses, showing the applicant's inability to support himself.[3]

When the Adjutant General received the application, he was to examine the military record, and, if necessary, call upon the applicant for additional evidence. When all the evidence had been submitted, the claim was sent to the State Pension Board, together with the Adjutant General's recommendations.[4]

There were several miscellaneous provisions: a person could not receive more than five dollars as agent or attorney in prosecuting a claim; violators of the act could be fined from one hundred dollars to three hundred dollars for each offense;[5] the allowances were not subject to attachment, levy, or seizure,[6] and no fees were to be charged by any state or county officer, except notaries, for services in connection with the allowances.[7]

Special examinations could be made by the State Inspector and Examiner if requested by the State Pension Board.[8] If a grant were wrongfully made, the State Pension Board could drop the bene-

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[1] Ibid., sec. 2.
[2] Ibid., sec. 3.
[3] Ibid., sec. 4.
[4] Ibid., secs. 6-7.
[5] Ibid., sec. 10.
[6] Ibid., sec. 12.
[7] Ibid., sec. 16.
[8] Ibid., sec. 14.

ficiary after thirty days' written notice, provided that the evidence of the beneficiary had been heard.[1] The Adjutant General was to make a report every two years showing the names of those receiving an allowance, their county, and post-office addresses. This list was to be sent to the county judge, county attorney, county clerk, and sheriff of each county.[2]

During 1912 and 1913, the Attorney General was asked for his opinion on several problems concerning the soldier's allowances. In 1912, he held that the act inferred that the testimony of an applicant might be taken orally in court, but he did not believe that that would be a proper or safe practice. He thought the evidence should be reduced to writing and placed in the form of an affidavit or deposition, and that it should be preserved.[3]

In the following year, 1913, other questions arose. The first was whether or not the right to an allowance, after receiving a certificate, inured to the applicant from the date of application to the date of death. A claimant made application for an allowance in June, 1912, and it was granted. He received his certificate on November 14, 1912, but he died on February 14, 1913. The Attorney General said that the act of 1912 was silent on the point whether or not the certificate vested a property right in the claimant, but undoubtedly the right to the allowance was based upon the issuance of the certificate.[4]

Again in 1913, there was the question whether or not the warrants drawn by the Auditor of Public Accounts in payment of the allowances could be stamped "interest bearing" if there were no funds. The Attorney General said it was the duty of the treasurer to "forward a treasury check to the address of the claimant," but if there were no funds, then it was his duty to stamp the warrants.[5]

In 1914, the act of 1912 was repealed. Under the new act the administration of the allowances was placed in a Confederate Pension Department under the direction and control of a Commissioner, who was appointed by the Governor for a four year term.

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[1] Ibid., sec. 18. [2] Ibid., sec. 17.

[3] Attorney General of Kentucky, Opinions, 1912-1913 (Frankfort: The State Journal Co., 1914), p. 848.

[4] Ibid., p. 479. [5] Ibid., p. 797.

The Commissioner had power to decide all questions under the act, but an applicant could appeal to the Pension Board, consisting of the same members as under the act of 1912. The decisions of the Pension Board were final.[1] Many of the features of this act were the same as the previous act; therefore, attention will be called only to those points where changes were made by the new act.

Anyone was eligible for an allowance if indigent and disabled, a resident of the state since January 1, 1907, and who had had military service in the Confederate Army from the date of his enlistment to the close of the war or until honorably discharged as an officer, soldier, or sailor in the military or naval service of the Confederate states during the war, 1861-1865. The widows of these persons were eligible if they had been married prior to January 1, 1890, and were living with the officer, soldier, or sailor as his lawful wife at the time of his death. One was also eligible if prevented from serving until the end of the war or until honorably discharged because of wounds or disease contracted while in service. The disabilities with reference to desertion and dishonorable discharge were the same as in the act of 1912, except that a soldier was not a deserter who had been compelled during the last six months of the war to take an oath of allegiance to the United States Government in order to save his life.[2]

If a person died while receiving an allowance, the amount due the decedent at the time of his death was to be paid the administrator of his estate appointed by the County Judge of the county where the person had resided. If there was no widow, or if the deceased person was a widow, the administrator was to use the money to defray the expenses of illness and the funeral. If there were more than enough to meet these expenses, it was to be distributed as other funds belonging to the estate of the deceased.[3]

The residence disabilities for an allowance were the same as in the act of 1912, except that the period of absence from the state was now three months instead of twelve. The application and the court hearing were the same as in the previous act, except that the county judge was to send all the records to the Commis-

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[1] Acts, March 18, 1914, chap. 35, secs. 1-2.

[2] Ibid., sec. 6. [3] Ibid., sec. 7.

sioner instead of to the Adjutant General.[1] The Commissioner could call upon the applicant for additional information, but when all the information was collected, the Commissioner was to pass on the claim.[2]

Under the act of 1914, the application did not have to be accompanied by the affidavits of two physicians, or two lay persons and one physician, to prove the applicant's inability to support himself. However, anyone who wilfully and corruptly swore to an application or made a wilful or false statement under oath in regard to an allowance for another person was guilty of perjury.[3]

The fees for service as agent or attorney in prosecuting the claim were the same as under the 1912 act, and the fines for violations were the same.[4] Special investigations were to be made by the Commissioner, who was to file his report in writing. He had power to summon and swear witnesses to appear and give testimony in the county where the applicant lived.[5] Official fees were waived by the state and county officers as under the act of 1912, and the official list of those receiving grants was to be published annually by the Commissioner. Allowances could be discontinued, but under the new act, the action was to be taken by the Commissioner.[6]

The act of 1914 was amended in 1918 by increasing the allowances from ten dollars to twelve dollars a month.[7] The act also provided that anyone entitled to an allowance who had forfeited his right by taking up residence in another state would regain his rights if he returned to Kentucky in good faith to take up his residance.[8]

In 1928, a new eligibility requirement was made for widows in that they were not to have remarried since the death of their veteran husbands.[9] The amount of the allowance was increased from

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[1] Ibid., sec. 11. [2] Ibid., sec. 12.

[3] Ibid., sec. 13. [4] Ibid., sec. 16.

[5] Ibid., sec. 19. [6] Ibid., sec. 23.

[7] Ibid., March 28, 1918, chap. 121, sec. 1.

[8] Ibid., sec. 3.

[9] Ibid., February 28, 1928, chap. 150, sec. 1.

twelve dollars to twenty dollars a month, and when it was granted, the Commission was to issue a certificate to the applicant showing that he or she was entitled to the allowance from the date it was granted. The certificate was to be accompanied with proof of service in the Confederate army. No allowance was to be retroactive.[1] In 1929, the Attorney General said that if the widow of a Confederate soldier remarried and was later divorced she lost her right to an allowance. This opinion was based on the case of Mrs. Laura Hunter of Louisville, who received an allowance and later married Robert Ferguson on February 16, 1929. They lived together one week; then he deserted her.[2]

The act of 1928 was amended in 1932, and the monthly allowances were increased from twenty to thirty dollars.[3]

In 1913, a case went up to the Court of Appeals in which the constitutionality of the original act was contested. James M. Harp made application for a grant, but the Auditor refused to pay the claim because the act was thought to be unconstitutional in that it granted privileges to indigent Confederate soldiers and their widows which were not granted to other indigents, and it was void because the word "appropriate" had not been used. The Franklin Circuit Court granted Harp a mandamus action against the Auditor and the upper court agreed.

The upper court held that the soldiers, because of their public service, were different from other indigents. While it was true that James M. Harp and his comrades opposed the federal government, nevertheless, they were citizens of a sovereign state and their service was a public one for the state of Kentucky. When the southern states seceded, Kentucky declined to furnish troops for the federal government. A resolution of the Kentucky House of Representatives made it clear that Kentucky planned to remain neutral during the Civil War, but the general assembly did approve large sums for the state and home guards. When the state was invaded by Confederate and Federal troops, the position of neutrality could not be maintained. Some Kentuckians then joined the Federal

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[1] Ibid., sec. 2.

[2] Attorney General of Kentucky, Opinions, 1929-1930 (Frankfort: The State Journal Co., 1931), p. 69.

[3] Acts, 1932, chap. 42, sec. 1.

army, while others went into the Confederate forces. The Kentuckians who fought in the Confederate army were fighting for a principle for the state of Kentucky. This principle was that each state had a right to regulate its local affairs. Although these soldiers lost, Kentucky always recognized that they had rendered a public service to the state.

While it was contended that the act was void because the word "appropriate" was not used, the upper court held this was not necessary as the general assembly had made similar allowances for years. The state might show that the republic was not ungrateful to these confederate soldiers not only by erecting monuments to them when dead or by placing flowers on their graves, but it might, with equal propriety, "gladden their hearts while living and in their infirmity give them bread."[1]

When a survey was made of the state government in 1924, there were about two thousand persons receiving allowances of whom nine hundred were veterans and eleven hundred were widows. Although about twenty-five new cases were added each year, six or seven times that number died so that in ten years there would be few remaining. In spite of this large number of cases, the survey staff recommended the discharge of one of the two clerks, and even suggested the abolition of the office and turning the work over to the Treasurer's office or to the office of the Adjutant General. Obviously, the survey staff did not conceive of this office as having any responsibility other than doling out routine relief. This meant that no attention was given to the treatment of social problems, nor was there any supervision of the relief expenditures.[2]

Blind Assistance

In order to understand better the provision for the dependent blind in Kentucky, it will be necessary to call attention to the problem of trachoma. In 1915, a study revealed that of

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[1]Henry M. Bosworth, Auditor v. Harp, 154 Kentucky Reports, 559 (1913). One of the judges dissented on the basis that the act did not make for a reasonable or natural classification; it was arbitrary and unjust. He described it as class legislation of the worst type.

[2]Efficiency Commission of Kentucky, Report of the Government of Kentucky (Frankfort: The State Journal Co., 1924), II, 678.

18,016 persons examined in twenty-three counties, 1,280, or 7 per cent, were suffering from trachoma. All of the counties included in this study, except Clark, Fayette, and Anderson, were in the eastern or mountainous section of the state.[1] However, the disease was not confined to the eastern part of the state. A study of the school children in Jefferson County which was made between December 7, 1913, and February 14, 1914, revealed 805 cases of trachoma and 328 suspected cases among 35,297 children examined.[2]

Miss Linda Neville of Lexington and Miss May Stone, head of the Hindman Settlement School in Knott County, were the first to realize, in 1908, the importance of this problem. Later, Dr. J. A. Stucky, of Lexington, became interested and established the first operative clinics in the mountains.[3] In 1921, the Bureau of Trachoma of the Kentucky State Board of Health was organized, and a traveling unit, a director and two public health nurses, was put in the field. Wagons were first used as a means of transportation for the mobile clinic, but automobiles were adopted in 1926. Between 1923 and 1925, trachoma hospitals, operated by the United States Public Health Service, were opened in several Kentucky counties. Recently the Bureau of Trachoma, the Bureau of Tuberculosis, the Bureau of Venereal Diseases, and the Bureau of Epidemiology were merged to form the Bureau of Communicable Diseases.[4] Trachoma control today is a regular part of the work of the full-time county health departments. While the disease is still prevalent in certain parts of the state, it can hardly be said to constitute a major health problem.

A study of the dependent blind in 1935 revealed that it was not known how many blind persons there were in the state. The Federal Census of 1930 enumerated 1,977 blind persons in Kentucky, but sample studies by the American Foundation for the Blind for

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[1] John McMullen, "Trachoma," Public Health Reports, XXX, Part I (March 5, 1915), 677. In 1912, the Kentucky State Board of Health requested the United States Public Health Service to investigate the problem of trachoma in Kentucky, and take charge of the situation.

[2] J. H. Oakley, Dunlop Moore, and Lawrence Kolb, "Trachoma in Kentucky," ibid., XXIX, Part I (May 29, 1914), 1361-62.

[3] Juanita F. Jennings, "County Health Department Activities--Trachoma Control," Bulletin of the Department of Health, VIII, No. 8 (March, 1936), 165.

[4] Ibid., p. 166.

certain counties in North Carolina and Georgia indicated the ratio to be one blind person to every three hundred seeing persons. On the basis of these studies, it is probable that there were more than 8,600 blind persons in Kentucky.[1]

By an act of 1924, the fiscal court or the county commissioners were authorized to make a levy for the relief of the indigent blind.[2] Not more than two hundred and fifty dollars a year could be granted to each indigent blind adult.[3] Those who were eligible for an allowance must have resided in the state for at least ten years, and at least five years continuously in the county of residence prior to the date of application.[4]

It is also significant to note that the act of 1924 made no reference to the enforcement of family responsibility, while in 1935 eleven out of twenty-seven states which provided blind allowances prohibited persons from receiving grants if they had financially competent relatives.[5]

Under the Kentucky act, the applications, sworn to by two reputable citizens of the county of residence, were made with the county clerks. The city or county physician was to examine the eyes of the applicant, and report the facts to the county judge. There was no state supervision or control over the local authorities granting the allowances. If the applicant had no useful

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[1] Mrs. Robert I. Kutak, "Facilities for the Care of the Blind and the Prevention of Blindness in Kentucky" (Kentucky Emergency Relief Administration, Louisville, 1935), p. 1. (Mimeographed.)

[2] Acts, March 28, 1924, chap. 18, sec. 1.

[3] Ibid., sec. 2. Although the maximum grant was only two hundred and fifty dollars a year, the maximum grants in 1934, in twenty-seven states having blind assistance laws, ranged from one hundred and fifty dollars a year in New Hampshire to six hundred dollars a year in California, Kansas, Nevada, and Utah. See Committee on Economic Security, Social Security in America (Washington: U. S. Government Printing Office, 1937), p. 304.

[4] Acts, March 28, 1924, chap. 18, sec. 3. Out of twenty-three states in 1935, the period of residence was four years in one state, five years in ten states, seven years in three states, and nine years in nine states. See Committee on Economic Security, op. cit., p. 305.

[5] Committee on Economic Security, op. cit., p. 306.

vision and he or she met all the other requirements for eligibility, the judge could make the grant.[1]

The Kentucky definition of blindness, "destitute of useful vision," was unusual as only one other state, Nebraska, used the same definition in 1935. The most common definition (Indiana, Maryland, New York, Oklahoma, and Washington) was "so defective as to prevent self-support," while the remainder of the twenty-seven states having blind allowances made use of various definitions.[2]

No one was entitled to aid who was a professional beggar, or who was able to earn four hundred dollars a year by manual labor, profession, trade, or craft. Neither was one eligible if receiving a pension from the United States, another state, or foreign government, or from any source which, when added to his earnings, exceeded four hundred dollars a year. Persons were also ineligible for blind assistance if they possessed property valued at twenty-five hundred dollars or more, or had an income, from any source, exceeding four hundred dollars a year. Lastly, all persons were ineligible who were in any state, county, or charitable institution of Kentucky or of any other state.[3]

It should be noted that the act of 1924 did not make use of state funds to aid in financing the allowances, but in 1935 eight out of twenty-seven states provided for the complete financing of the allowances by the state government. Not even a specific local tax was provided in Kentucky. The allowances were to be made out of the general county funds, but this was also true in seven other states.[4]

The question whether the Kentucky act was mandatory or optional on the counties soon came before the upper court. W. R. Hazelip, a blind man in Edmonson County, brought an action against the fiscal court. He showed that he had complied with the act, but the fiscal court had not granted him an allowance. The Edmonson Circuit Court refused to grant him relief, and the upper court agreed.

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[1] Acts, March 28, 1924, chap. 18, sec. 3.

[2] Committee on Economic Security, op. cit., p. 308.

[3] Acts, March 28, 1924, chap. 18, sec. 4.

[4] Committee on Economic Security, op. cit., pp. 308-309.

Hazelip maintained the general rule to be that permissive words in respect to courts or officers were imperative in those cases in which the public or individuals had a right that the conferred power be exercised. The upper court thought differently, and held that this rule could not be applied to a case where an act, if so construed, would create a public obligation where no public obligation existed before the act was passed. The counties of the state were merely arms of the state government, and the fiscal court had only that authority which was conferred upon it. Public obligations were not created unless expressly authorized.

In this case the act did not provide that the fiscal court must pay a sum reasonably sufficient for the support of a blind adult, and it fixed no basis upon which the allowance was to be made. The whole matter of the provision for the blind rested on the discretion of the fiscal court, and if the court saw fit, it might take no action under the act.[1]

It was difficult to learn the number of persons who were receiving blind allowances under the Kentucky act of 1924. In 1932, the American Foundation for the Blind reported that $101,522 was granted to six hundred and sixty persons in eighty-two out of one hundred and twenty counties. In 1933, only forty-six counties, exclusive of Jefferson, granted blind allowances to 750 cases. The average annual grant, in 1933, was seventy dollars.[2] In 1934, another report indicated that a total of $42,129 was granted to 383 cases. The average monthly allowance was only nine dollars and seventeen cents, while the average in the United States for twenty-seven states was nineteen dollars and ninety-six cents a month.[3]

It was interesting to note that in January, 1934, the Jefferson County Fiscal Court discontinued the allowances to the blind since the county judge thought it unwise to make the grants as no investigation of need was made. In the spring of 1935, plans were made to resume payment of the allowances, but the cases

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[1]Hazelip v. Fiscal Court of Edmonson County et al., 228 Kentucky Reports 80 (1929).

[2]Kutak, op. cit., pp. 5-6.

[3]Committee on Economic Security, op. cit., p. 303. The number of counties in which the allowances were made in 1934 was not given.

were to be investigated by the Louisville Department of Public Welfare. By June of that year, only thirty-nine allowances had been granted.[1]

Three hundred and twenty-six blind allowance cases in eighteen counties were studied in May, 1935. In forty-four cases, or 14 per cent, the cause of blindness was due to accidents; cataracts in eighty-one cases, or 25 per cent; old age in fourteen cases, or 4 per cent; trachoma in eleven cases, or 3 per cent; miscellaneous causes in one hundred and twenty cases, or 37 per cent; and the causes were unknown in fifty-six cases, or 17 per cent.[2] Although the act of 1924 required an eye examination by the county physician before the allowance was granted, twenty-two of the 326 cases had had no examination. Out of 304 cases examined by a doctor or specialist, the county had a medical report on only 154 cases.[3]

In August, 1934, when a study was made of the 885 blind persons receiving assistance from the Kentucky Emergency Relief Administration, it was learned that 261 had at one time or other received blind allowances. However, 164 of the 261 had lost their allowances because of the lack of county funds.[4]

Old Age Assistance

An optional old age assistance act was passed in Kentucky in 1926. This act provided that the fiscal courts or the county commissioners might establish old age allowances, but any county could abandon the plan after trying it for a year.[5]

The amount of the annual allowance was to be fixed by the county judge, but in no case was it to exceed two hundred and fifty dollars per person.[6] An applicant, before making applica-

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[1] Kutak, op. cit., p. 6.

[2] Ibid., p. 10.

[3] Ibid., p. 8.

[4] Ibid., p. 16.

[5] Acts, March 25, 1926, chap. 187, sec. 1. It is not surprising that the Kentucky act was optional, since as late as 1928 there were but five other states and one territory: Alaska, Colorado, Maryland, Montana, Nevada, Wisconsin, with old age assistance acts and all of them were optional. See Committee on Economic Security, op. cit., p. 160.

[6] Acts, March 25, 1926, chap. 187, sec. 2.

tion, had to be at least seventy years old, a citizen of the United States for fifteen years, and a resident of the state and county of application for at least ten years immediately preceding the date of application.[1]

No one was eligible for relief if he were a professional beggar. Property and income disqualifications were the same as for the blind, as established by the act of 1924. There was one exception; no person was eligible for old age relief if he had deprived himself of property in order to become eligible. This was not an unusual provision as in most states assistance was denied to persons who had deprived themselves of property in order to qualify for aid. Neither was one eligible for aid in Kentucky if there was an adult child or other person responsible for his support under the laws of family responsibility.[2]

Under the Kentucky act, if a person died who had been receiving an allowance, the total amount received with 3 per cent annual interest was to be deducted from his estate, and the recovered money was to be paid into the treasury of the county where the allowance was granted.[3]

The application was to be filed in writing with the county judge of the county of residence. The judge was to make the investigation, decide whether or not the grant should be made, and fix the amount of the allowance. His decision was final, and a rejected applicant could not apply again for twelve months. Each person who received a grant was to obtain a certificate showing the date when the payments were to begin and the amount of each quarterly or monthly installment. If the status of the recipient

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[1] Ibid., sec. 3.

[2] Ibid., chap. 187, sec. 4. In 1934, the twenty-eight states and two territories which had old age assistance laws, except Arizona and Hawaii, specified that the grants should not be paid to old people who had children or relatives able to assist them. See Committee on Economic Security, op. cit., p. 162.

[3] Acts, March 25, 1926, chap. 187, sec. 5. Almost all of the old age assistance laws in the twenty-eight states and two territories provided, in 1934, that the amount of the assistance should be a lien on the estate and collected upon the recipient's death or upon the death of the surviving spouse. See Committee on Economic Security, op. cit., p. 163.

changed at any time, the county judge could revoke the allowance.[1] It is interesting to note that this act made no provision for state supervision of the allowances. No funds were provided by the state, but the entire burden of cost was placed on the counties. Not only did the Kentucky act leave all the responsibility to the counties, but also it did not require an annual report. There was no question but that the purpose of the old age assistance laws had been more effectively carried out in those states which had provided state supervision than in those which had made the counties entirely responsible. The ratio of beneficiaries to the number of people of eligible age was also highest in those same states.[2]

Under the Kentucky act, a person was guilty of a misdemeanor who wilfully gave false statements, or, by impersonation or other fraudulent device, obtained, aided, or abetted a person to obtain an allowance to which he was not entitled. On conviction, such persons might be fined not more than five hundred dollars, imprisoned in the county jail for not more than a year, or both.[3]

The old age assistance act of 1926 did not have much effect on the county expenditures for the aged. When a study of outdoor relief was made for 1933 and the first six months of 1934, it was learned that out of the one hundred and twenty counties, eleven in 1933, and twelve in 1934, had made an appropriation for old age allowances. In ten counties, where data could be obtained, the average appropriation was but forty dollars for the year 1933.[4]

It was also significant that in 1934, the old age allowances were discontinued in Jefferson County because the judge believed the investigations were not adequate to determine the need. At that time there were only thirty-seven cases receiving allow-

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[1] Acts, March 25, 1926, chap. 187, sec. 6.

[2] Committee on Economic Security, op. cit., p. 162.

[3] Acts, March 25, 1926, chap. 187, sec. 7.

[4] Kutak, op. cit., p. 14. In 1934, the average monthly grant in twenty-eight states and two territories which had old age assistance laws was nineteen dollars and seventy-four cents. See Committee on Economic Security, Report to the President (Washington: Government Printing Office, 1935), p. 24.

ances, yet there were several hundred applications on file.[1]

In October, 1933, 17,813 persons sixty-five years of age and over, representing 3.8 per cent of the total relief load for that month, were receiving federal relief in Kentucky. Aged persons were also receiving outdoor relief from private societies, and poor relief from the counties, but it was not possible to determine the number of such cases or the amount of relief.[2]

Widows' Allowances

The relief of dependent widows and their children was the fourth type of categorical assistance to be provided during the twentieth century. Although statutory provision for these cash allowances was not made until 1928, a few brief comments should be made on the historical development of legislative interest in child welfare, as the Kentucky Children's Bureau, the central authority for the administration of these allowances, emerged from this movement.

In 1920, by a House resolution, the governor was asked to appoint "The Children's Code Commission." This Commission was to consist of five citizens who were to serve without pay. They were to study the entire child welfare field, and make a report to the governor and the general assembly. They could summon witnesses, compel their attendance, and have other powers necessary for making the study. However, no funds were provided to carry out the work.[3] Two years later, 1922, there was created "The Kentucky Child Welfare Commission" consisting of nine citizens who were to serve without pay. They were appointed by the governor for three year terms, and were to carry on the work of the Children's Code Commission of 1920, investigate and study the needs of children, and present to the governor and general assembly, before each session of the legislature, a report on their findings and recommendations. The members of the Commission were also to be ready to advise the governor and the legislators on all bills concerning children.[4]

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[1]Kutak, op. cit., p. 14. [2]Ibid., p. 11.

[3]Acts, March 11, 1920, chap. 193, House Res. No. 27.

[4]Efficiency Commission, Report on the Government of Kentucky (Frankfort: The State Journal Co., 1924), II, 231-35.

A study which was made of the state government in 1924 called attention briefly to the Child Welfare Commission and pointed out that it was purely an advisory body. Since it had no funds with which to carry on its work, interested persons paid for the necessary expenditures. It was recommended that the work of the Commission be extended so that the advisory service would be available to the State Board of Charities and Corrections as well as to the governor and members of the legislature.[1]

The Child Welfare Commission was abolished in 1928 and the Kentucky Children's Bureau was created in the same year. This Bureau consisted of nine members who were to be citizens and voters of Kentucky, at least thirty years of age, and residents of the state for at least two years prior to their appointment. Since it was to be a non-partisan board, not more than five members could be of the same political party, and four of them were to be women. They were appointed by the governor for three year terms, and were to serve without compensation.[2]

The Bureau was to have an office at the state capitol in Frankfort, where it was to hold its meetings. It was to elect annually a president, vice-president, secretary and treasurer, but the latter two positions might be held by the same person. It was to make a biennial report to the governor showing its receipts and disbursements, together with a detailed statement of its activities for the same period. It could also appoint the director and assistants, and fix their compensation.[3]

Among the various responsibilities of the Bureau was that of aiding the counties to establish county children's bureaus, and co-operate with those already established as well as with all other agencies, institutions, and associations concerned with child welfare. It was to carry on the work of the former Children's Code Commission of 1920, and the Kentucky Child Welfare Commission of 1922. It was to discover the dependent, neglected, delinquent, and defective children, secure the benefit of the law for these groups, and have general supervision over the mother's

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[1] Acts, March 24, 1922, chap. 107, secs. 1-2.

[2] Ibid., March 21, 1928, chap. 17, secs. 1-2.

[3] Ibid., secs. 4-5.

allowances.[1]

While the power of the Bureau was extensive with reference to the physically handicapped, delinquent, neglected, dependent, and defective children, this discussion will be concerned only with those responsibilities relating to the "mothers' allowances." It must also be kept in mind that this was an optional, not a mandatory, act.[2]

Under this act the fiscal courts or the county commissioners, with the advice and assistance of the state Bureau, were to establish county children's bureaus. For the county bureaus, the county judge and the county superintendent of schools were to recommend nine persons to the state Bureau, but fifteen if the county contained a city of the first or second class. From this list the state Bureau was to recommend three persons, or five persons if the county contained a city of the first or second class, who were to be appointed by the county judge and the county superintendent of schools as the County Children's Bureau. Both sexes were to be represented on these local bureaus; the members were to serve for three year terms; and they could be reimbursed by the county for their travel expenses. The fiscal courts or county commissioners were to provide the funds, and make available office space in the county court house.[3]

The county bureau had power to appoint an executive officer whose qualifications were approved by the state Bureau. He was to serve at the pleasure of the local bureau, and receive a salary determined by it. He could appoint properly trained assistants authorized and approved by the local bureau and establish their salaries. All salaries and travel expenses of the county staff, as well as other expenses, were to be paid by the Bureau out of funds appropriated to it by the fiscal court of the

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[1] Ibid., secs. 7-8.

[2] In 1934, it was probably correct to state that less than half the counties in the United States with legal authority to aid dependent children were actually giving aid, but in Kentucky less than 1 per cent of the counties were granting mother's assistance. See Committee on Economic Security, Social Security in America, p. 236.

[3] Acts, March 21, 1928, chap. 17, sec. 16.

county commissioners. Two or more counties might combine their programs if the local bureaus received the approval of the fiscal courts or county commissioners of the counties combining.[1]

The preceding material describes the state and local administrative machinery for the administration of the mother's allowances. These grants were to be made to indigent mothers with children under fourteen years of age if such mothers were mentally, morally, and physically able to care for their children, and if it were to the best interest of the child to remain in the home. The mother must have been a resident of the county of application for two years prior to application, and "mother," under this act, meant any female person standing in loco parentis to children less than fourteen years of age.[2] The county bureaus could also make grants for children from fourteen to sixteen years of age if they were doing satisfactory school work, or if physically, mentally or legally prevented from obtaining employment.[3]

The county bureau determined whether or not the mother or guardian was a fit person and whether or not the home was satisfactory for the training and rearing of the children. It also determined the resources of the family, the ability of the members to work or contribute to the support of the family, the ability of relatives to aid, and what various individuals, organizations, or societies were interested in the family. The county boards could compel a person to support the family if he were legally

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[1] Ibid., sec. 18.

[2] In 1934, out of forty-five states, the District of Columbia and three territories which had mothers' assistance laws; thirty-six states, the District of Columbia, Alaska, and Hawaii extended aid to mothers whose husbands had deserted. The laws of twenty-one states, the District of Columbia, and Alaska were very liberal, and gave aid to any mother with dependent children, or a dependent family in which the father was dead, divorced, physically or mentally incapacitated, imprisoned, or had deserted the family. See Committee on Economic Security, Social Security in America, pp. 234-35.

[3] Acts, March 21, 1928, chap. 17, sec. 20. In 1934, allowances were granted to children up to sixteen years of age in twenty-nine states, the District of Columbia, Alaska, and Puerto Rico, while two states made grants for children up to seventeen or eighteen years of age. See Committee on Economic Security, Social Security in America, p. 235.

liable.[1]

On the basis of such investigation, the County Children's Bureau was to put its findings in writing, and if the conditions were satisfactory, it could grant a monthly allowance ample to insure the proper maintenance of the children in the home. No maximum amount was specified.[2]

The monthly grants were to be reviewed by the county bureaus at least every six months. They could increase or decrease the allowance, discontinue it, or alter or amend the conditions upon which the allowance was previously granted.[3] The homes of the mothers receiving the grants were to be visited at least once every three months,[4] and a full record was to be kept of each beneficiary. These records were to include the investigation, correspondence, and other information, as well as the orders of the bureau. The names of the beneficiaries were not to be published in any newspaper, and all payments were to be made directly to the mothers.[5]

In order to carry out this act, the legislature appropriated five thousand dollars to the Kentucky Children's Bureau for the year ending June 30, 1929, and an additional five thousand dollars for the following year.[6] The fiscal courts or county commissioners were authorized (compulsion was not involved) to establish a County Mothers' Aid Fund to be administered by the County Bureau. The money was to be raised by an annual tax not exceeding two cents on each one hundred dollars worth of taxable property in the county. In order to make the act effective immediately,

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[1] Acts, March 21, 1928, chap. 17, sec. 21.

[2] Ibid., sec. 22. In 1934, the maximum grants specified in the state laws for a mother and three children permitted an allowance ranging from twenty dollars and less than thirty dollars a month in seven states and Puerto Rico, with the lowest amounts specified; to sixty dollars and less than seventy dollars a month in four states, with the highest amounts specified. The average monthly allowance per family ranged in 1933 or 1934 from eight dollars and eighty-one cents in Louisiana to fifty-one dollars and eighty-three cents in Massachusetts and sixty dollars and fourteen cents in the District of Columbia. See Committee on Economic Security, Social Security in America, p. 246.

[3] Acts, March 21, 1928, chap. 17, sec. 23.

[4] Ibid., sec. 24.

[5] Ibid., secs. 25-26.

[6] Ibid., sec. 27.

the counties were authorized to make appropriations from the general revenue of the county.[1] An additional grant of $1,773.63 was made to the state bureau in 1930 which represented the unexpended balance of five thousand dollars for the period March 21, 1929, to June 30, 1929.[2]

Social work students will immediately raise the question concerning the effectiveness of this permissive mothers' allowance act of 1928. In answer to this question it is significant to note that only one unit, the Fayette County Children's Bureau, was ever established. It was organized in March, 1931, but as late as 1934 there were but twenty-one children benefitting from the allowances and the total expenditure for that year was only eight hundred and eighty-seven dollars and eighty-eight cents.[3]

Mothers' allowances have been granted in Jefferson County since 1921 but they have been administered by the Louisville and Jefferson County Children's Home rather than by a children's bureau. The Jefferson County plan had no relationship to the act of 1928. In the program of this institution, mothers' allowances gradually became an acceptable form of care for children in their own homes, and in 1928, the board included fifteen thousand dollars in its budget for this purpose. The judge of the Jefferson County Juvenile Court was anxious to commit children to the institution so that they could benefit by this type of care; therefore, in June, 1928, the Jefferson County Fiscal Court appropriated forty-two thousand dollars for this purpose. In order to administer this expanded program more effectively, a Mothers' Aid Department was established by the Jefferson County Children's Home. In 1929, the county appropriation was increased to sixty-four thousand dollars, and by 1934, 154 families and 522 children were receiving an average monthly allowance of thirty-seven dollars and seventy-seven cents. The total expenditure for 1934 was $72,214.64.[4]

Lastly, in 1935, the city of Louisville made an appropriation to this institution so that the total budget for mothers'

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[1] Ibid., sec. 28. [2] Ibid., 1930, chap. 560.

[3] Mrs. Robert I. Kutak, "Children in Their Own Homes, Illegitimate Children, Child Protection" (Kentucky Emergency Relief Administration, Louisville, 1935), p. 2. (Mimeographed.)

[4] Ibid., pp. 3-4.

allowances was increased to one hundred and twenty thousand dollars; forty thousand dollars being appropriated by the city and eighty thousand dollars by the fiscal court. On June 1, 1935, a total of 210 families with 692 children were receiving allowances under the Mothers' Aid Department of this institution.[1]

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[1] Ibid., p. 4.

CHAPTER VIII

SUMMARY

The development of the Kentucky poor law was unusual in that it was based upon nearly two centuries of poor law experience in Virginia. Kentucky was not a part of the Northwest Territory; therefore, it did not share many of the features of administration of those states, such as confusion with reference to county and township responsibility or the widespread use of institutional provision for the poor. When Kentucky separated from the parent state of Virginia and was admitted to the Union on June 1, 1792, it inherited the basic principles of public responsibility for the care of the poor as set forth in the Virginia acts of the 1780's. The Kentucky poor law of 1793 made it clear that the counties, and not the townships nor the municipalities, were to be responsible for the care of the poor. The county has, therefore, always been the administrative unit responsible for the poor law.

The state of Kentucky did assume considerable responsibility in meeting many of the problems of the poor. This was evidenced by the early use of vacant and unappropriated land to relieve destitution; an act of 1820 which gave destitute widows, those with estates of less than one hundred dollars in value each, one hundred acres of land; the care of pauper idiots and lunatics by cash allowances from the state treasury; and the relief of flood, drought, and cyclone sufferers. However, it is only fair to point out that this action was largely of an appropriative nature; administrative control or supervision of these programs was not included.

The Kentucky poor law of 1793, like the Virginia acts of the late eighteenth century, embodied the English poor law principles of local responsibility and local administration, but family responsibility was not adopted until 1906 and pertained only to parents and to adult children. The statutes were silent with reference to settlement as a prerequisite to poor relief, and even as late as 1936, no provision had been made for the en-

forcement of this principle which was so widely adopted by most of the American states. This difference seems all the more strange when it is recalled that settlement was a definite prerequisite to the cash allowances in the first half of the nineteenth century, for infirmary relief in the 1880's, for the allowances established for the confederate soldiers in 1912, for the blind in 1924, for the aged in 1926, and for the dependent widows in 1928. The same might be said of family responsibility; although family responsibility was not a part of the poor law until 1906, it had been applied to the pauper idiot allowances as early as 1840 and to infirmary relief in the 1880's.

Prior to 1850, or the adoption of the third Constitution, the administration of the poor law was vested in the county courts which consisted of the justices of the peace. The Constitution of 1850 and the subsequent statutes established a county court presided over by a county judge; but at the October term of the court, known as the court of claims, the justices sat with the county judge and he and they constituted the county court which, among other things, made provision for the poor. This meant that between 1850 and the adoption of the Constitution of 1891, the county court, consisting of the judge alone, exercised only the power to declare a person a pauper or admit a pauper to the poorhouse. When the fourth Constitution was adopted on September 28, 1891, a county fiscal court was created which consisted of the county judge and the justices of the peace or the judge and commissioners. The fiscal court was given all the jurisdiction, including the care of the poor which, between 1850 and 1891, was vested in the court of claims.

However, the new system of local government was greatly handicapped because the Constitution of 1891 specified that no office might be created whose term was more than a certain number of years, a public officer could not receive more than five thousand dollars annually, salaries could not be changed during the term of office, and the county officers had to be residents of their respective counties. There were also limitations due to the tax and debt creating powers, as the Constitution of 1891 placed a debt limit on the counties of 2 per cent of the tax valuation, except for roads where a debt not exceeding 5 per cent of the valuation might be created by a two-thirds vote of the electors.

It was difficult to believe that after one hundred and

thirty-two years of poor relief experience, the poor in two counties, in 1924, were still being "hired out" to the highest bidder,[1] and in most counties per capita grants were made to the poorhouse keepers. Even as late as 1935, it was impossible to learn the extent or amount of poor relief. No books were kept, and the only evidence of relief expenditures consisted of receipted bills and warrants. Poor relief included everything: home relief, allowances to the aged, blind, and idiots; maintenance of poorhouses, pauper contracts, burials, subsidies, medical supplies, hospital care, and school books. In 1933, twenty-nine counties, and for the first six months of 1934, forty-two counties out of one hundred and seventeen, made no outdoor relief grants. It would be more accurate to say that during the economic depression of the 1930's the old poor relief system collapsed, and both children and adults were starving. Relief was given in many distressed areas by the National Red Cross, the American Friends Service Committee, and later by the federal government. The difficulties were largely due to the lack of relief resources and the impossibility of meeting local needs by local taxation. An effort was being made to meet modern social and industrial conditions with a system of poor relief which had been little modified since Colonial times.

With reference to relief in the county poorhouses, the conditions were more discouraging. Until 1873, when this responsibility was given to the court of claims, the legislature continued to make, in specific counties, provision for the sale of poorfarms and buildings. Whether or not the counties took advantage of the authority given them by the legislature with reference to poorhouses was not a matter of record, but a general statement of a social welfare worker, in 1886, indicated that few of the counties had poorhouses or made plans for the care of the poor. In 1914 and 1916, the institutions that had been established were filled with a miscellaneous group including children, aged, insane, epileptic, and feeble-minded. They were described as a "disgrace to civilization" and as having "intolerable conditions." As late as 1935, it was difficult to believe that of ninety-eight poorhouses family groups were being admitted to sixty-three, orphaned children to thirty-two, and nineteen were being used as detention homes. Out of 2,417 inmates, 101 were less than eighteen years of age,

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[1] Ballard and Morgan Counties.

498 were between eighteen and sixty years of age, and 1,818 were more than sixty years of age.

Perhaps the worst feature of the poorhouses in 1935 was the method of financing. While about half of the ninety-eight institutions received an annual appropriation from the fiscal court and a flat salary was given the superintendent, in the other institutions the board of the inmates was paid on a per capita basis, and the superintendent made what he could. When a per capita payment plan was used, some counties paid the superintendent on the basis of the number of meals served, such as twelve or eighteen cents. In other cases, a flat weekly or monthly per capita rate was given the superintendent. There was some evidence, in 1935, that the poor were still being hired out but exact information on this point was difficult to obtain. Most of the institutions were old farmhouses which were without modern conveniences and were located in inaccessible places which provided no transportation facilities.

Municipal provision for the poor throughout the nineteenth century consisted largely of care in the poorhouses or the combined institutions known as a poorhouse-workhouse. However, there were a few instances of other types of care. For example, the mayor and council of Lexington were authorized, in 1882, to make contracts for the care of the poor with the Fayette County Court or other suitable persons or associations. They could also lease the poor in the poorhouse for a period of not more than five years. In some instances the cities were allowed to place their poor in the county poorhouses provided that they reimbursed the counties for this service. In several cases the towns were authorized to take action to prevent the settlement of those who were likely to become chargeable. Prior to 1892, when the cities were classified, the legislature, by special acts, made provision for the poor in the individual towns; but after 1892, the legislation related to classes of towns or cities. These municipal relief plans, after 1892, were of little importance except as they related to cities of the first class; Louisville was the only first class city for which special provision was made which led ultimately to the establishment of the Louisville Department of Public Welfare in 1929.

One of the important points revealed by this investigation was the way in which, during the first half of the nineteenth

century, vacant and unappropriated state land was used for the relief of destitution. The provision seemed important because it indicated a recognition of these problems by the members of the legislature, and showed that the state was attempting to do something about them. Although soldiers and their families, or widows, were the two chief groups who benefitted by these land grants, the relief was extended to other categorical groups such as the aged, blind, crippled, and sick. In some cases the land grants, which usually consisted of one hundred acres, had to be located in a specific county, while in other cases, they could be in any part of the state. Many times, if an outright grant were not made, the legislature simply waived the remainder of the state price. The legal title was usually given to the beneficiaries during their lifetime and descended to the lawful heirs upon their death, but the beneficiaries to whom the grants were made could not sell or dispose of the land. These legislative grants came to an end shortly after 1833 when the responsibility for waiving the payments on state land for poor persons was given to the county courts.

Indigent widows, as mentioned above, seemed to receive special attention. The most important action revealed by this study with reference to widows was the act of 1820 which gave destitute widows, those with estates of less than one hundred dollars in value, one hundred acres of vacant land. It was an important act as it was a state provision to meet the problems of destitution for this particular group, and preceded by one hundred and eight years the widow's allowance act of 1928.

Other aspects of development to which brief attention has been given included the special funds granted between 1866 and 1871 for "negroes and mulattoes" to be used for their education and for the relief of their destitute. Public subsidies to private institutions and organizations could not be overlooked as they were so widely used in all areas of government: state, county, and municipal. Although the objectives of this study did not include an analysis of subsidies, it will be sufficient perhaps, to call attention to the fact that the fundamental principle of government administration, that public control should govern the expenditure of public money, was violated in many instances. The widespread system of subsidies was aided and abetted by the decisions of the Court of Appeals which had upheld their legality. Even as late as

1934, eight of the largest municipal authorities granted subsidies to the private welfare societies, and these grants, like those of the state to the private institutions, were made without any supervision or control by the granting authority.

One of the most unusual forms of aid revealed by this study was the use of cash allowances for the care of pauper idiots and lunatics. These allowances, first provided by an act of 1793, were, prior to 1852, for both idiots and lunatics. After 1852, except for the act of 1872, the grants were generally limited to idiots; but, actually, there were many exceptions made by the legislature in specific cases, and since neither psychiatric examinations nor psychometric tests were used to determine idiocy, there was no way of knowing whether or not the beneficiaries were idiots. The act of 1872 provided annual allowances for the care of pauper lunatics who could not be admitted to the asylums because the institutions were filled to capacity. It must also be kept in mind that prior to May 1, 1824, when the Eastern Lunatic Asylum was opened, there was no provision for the care of the insane other than the allowances.

Before 1825, the amount of the allowance was determined by the courts, but in 1825 a maximum of fifty dollars a year was established, and in 1873 it was increased to seventy-five dollars a year. After 1840, the inquests for persons of unsound mind were held in open court, but in 1918 it was provided that the court might in its discretion hold the hearings "in chambers." Exceptions were made for those cases who could not appear because of health or problems of control. As early as 1846 the personal appearance of the patient might be waived if two practicing physicians could prove in court, or by affidavits produced in court, that they had made an examination of the patient and found him to be an idiot. This provision was modified slightly in 1918 when it was provided that it would be preferable to use physicians who had made a special study of feeble-mindedness and mental disease. The difficulty was that in many counties there were not two practicing physicians available, and if available, they were not skilled in psychiatry. Little was to be gained by having such physicians make the examination.

Funeral allowances, not exceeding ten dollars, were made available in 1804. After 1855, re-examinations of the patients were to be made every fifth year, but the frequency of these re-

examinations was changed to every third year in 1918, and back again to every fifth year by an act of 1924. Between 1835 and 1850, the mayors of some of the largest towns, Covington, Lexington, Louisville, and Newport, were given the same jurisdiction as the circuit courts in regard to idiots and lunatics.

After 1882, the allowances were not to be granted for the care of children less than eight years of age nor for those persons, who, at times, were "enfeebled in mind by epileptic fits or other malady." During the latter part of the nineteenth century when the members of the legislature were greatly concerned about the burden of the pauper idiots, the cost was divided between the state and the counties. After 1890, fifty-five dollars was to be paid by the state and twenty dollars by the county of residence, but this was changed again in 1924, and thirty-seven dollars and fifty cents was to be paid by both the state and county. Although the act of 1918 provided for the termination of the idiot allowances in 1921, in 1924 they were re-established.

During a period of almost a century and a half, perhaps no part of the public welfare provisions of Kentucky was more greatly abused than the plans for the care of the pauper idiots. When extensive studies were made of these cases in 1917 and 1923, it was learned that only a small part of the allowances reached the beneficiaries. Some of those who received allowances were kept in the poorhouses, others were let out to the highest bidder, and some were kept in specially built out-houses as if they were domestic animals. The grants tended to foster dependency, and no training was given the beneficiaries for fear that the allowances might be discontinued if they became self-supporting. In some cases the idiots were regarded as economic assets as it was not unusual for a committee to have ten or twelve cases. Courts sometimes made a farce of the inquests, and certified persons able to care for themselves. The Kentucky pauper idiot law was known as the "law for the propagation of idiots and imbeciles."

The chief defects of this law were: (1) no social investigation was made of the cases to determine the need for an allowance, (2) psychiatric and psychometric examinations were not used to diagnose and plan the treatment, (3) the grants were made at the end of the year rather than at the beginning, (4) no attention was given to the re-education or training of the more promising cases, and (5) there was no case work service available for

continued supervision of the cases.

Not only was the picture of outdoor and indoor relief most discouraging, but the efforts of the state government to provide categorical assistance for indigent and disabled Confederate soldiers or their widows in 1912, the indigent blind in 1924, the destitute aged in 1926, and dependent widows in 1928, were futile Perhaps an exception should be made in the case of the assistance to the Confederate soldiers, but the small and untrained central staff consisting of the commissioner and two clerks apparently made no effort to give any attention to the treatment of social problems, nor to give case work supervision to the families to whom allowances were granted. There were about two thousand persons receiving allowances in 1924. At that time the intake was about twenty-five new cases a year, but approximately six or seven times that number died each year. This meant that within a few years the need for these allowances would cease.

In regard to the allowances for the indigent blind, made available by the optional law of 1924, the residence requirements of ten years in the state, and five years of continuous residence in the county of application, were so high that few persons were eligible for assistance. Further limitations of the act were the disqualifications if earnings exceeded four hundred dollars a year or if the property valuation exceeded twenty-five hundred dollars. The allowances were granted by the county judges, and the applications were sworn to by two reputable citizens of the county of residence, but no case work service was provided to determine eligibility nor was there any supervision of the cases once the allowance was granted. It was practically impossible to learn how many allowances were granted, but in 1933, only forty-six out of the one hundred and twenty counties, exclusive of Jefferson, were granting allowances to seven hundred and fifty cases, while it was estimated that there were as many as 8,600 blind persons in the state. Although the act provided for a maximum grant of two hundred and fifty dollars a year, the average annual allowance for these cases was only seventy dollars a year.

The optional old age assistance act of 1926 was less effective than the act for the indigent blind. The property and income disqualifications were the same as for the blind, the maximum allowance was the same, but the beneficiary had to be at least seventy years of age, a citizen of the United States for

fifteen years, and a resident of the state and county of application for ten years. The county judges made the investigations and fixed the amount of the allowance; there was neither case work service nor supervision of the cases. The state did not provide any funds nor did it maintain any oversight of the cases. In fact few allowances were ever granted, as only eleven counties in 1933, and twelve in 1934 out of one hundred and twenty, made an appropriation for the allowances. In ten counties in 1933, where data could be obtained, the average appropriation was only forty dollars a year. It was interesting to learn that in 1934, the allowances for the thirty-seven cases in Jefferson County were discontinued because the county judge believed that the investigations were not adequate to determine the need.

With reference to widow's allowances which were provided by a permissive act of 1928, only one county unit, The Fayette County Children's Bureau, was ever established. This unit was organized in March, 1931, but as late as 1934 there were but twenty-one children benefitting from the allowances and the total expenditure for that year was only $887.88. While it was true that mothers' allowances had been granted in Jefferson County since 1921, they were administered by the Louisville and Jefferson County Children's Home rather than by a county children's bureau as provided by the act of 1928. The Jefferson County plan really had no relationship to the state act, and it was significant that both the city and county had made large appropriations to this public children's institution in order to meet this program. On June 1 1935, a total of two hundred and ten families with six hundred and ninety-two children were receiving allowances under the Mothers' Aid Department of this institution, and to meet this budget, forty thousand dollars was appropriated by the city and eighty thousand dollars by the fiscal court.

Vagrancy, apprenticeship, and illegitimacy were also included in this study as many of these groups constituted a part of those for whom provision was made by the poor law. Vagrants of the eighteenth and nineteenth centuries were nothing more than that group of destitute known to social workers of today as transients. In Colonial Virginia, vagrants were treated harshly under an act of 1748 which was a re-enactment of the old English method of granting certificates to tithables when they traveled about from parish to parish. Those who did not have certificates,

or those who entertained, hired, or employed a person more than forty-eight hours without a certificate could be punished severely. Vagabonds and rogues were sent from constable to constable until they were returned to the parish where their wives or children resided or to the parish of their last residence. When they arrived at the parish where they belonged, they could be put to work, committed to jail, or bound out for a year. If no one wanted them, they were given thirty lashes on the bare back while tied to the public whipping post.

In the latter part of the eighteenth century, the Virginia legislature had much difficulty in keeping the rogues and vagrants in jail, as they soon got out through the assistance of their friends. In order to remedy this situation, the act of 1776 provided that if two or more justices thought that a vagrant might be rescued from the local jail, they could place him in the public jail at Williamsburg. If the vagrants would not give security after being committed to the Williamsburg jail, the governor, with the advice of the privy council, could put them on the row gallies or armed vessels of the Commonwealth for a year. If they were not able to do this kind of work, they could be bound out for a year. Even when the poor laws of 1785 and 1787 were enacted, and a public system of relief was set up in Virginia, the vagrants could be apprehended by the justices and hired out by the overseers for a period not exceeding three months. The wages were used for the support of the poor.

With this background of harsh and severe treatment of vagrants in Virginia, it was surprising that the Kentucky act of 1795 was not more severe than it was. Vagrants were defined as they were by the Virginia act of 1787, and when apprehended by the justice they could be held, if the justice thought they were vagrants, until the next meeting of the county court. The court could bind out the minors until twenty-one years of age, but if they were more than twenty-one they were hired out to the highest bidder for not more than nine months. The money obtained from the hire of a vagrant was used to pay his debts, and the support of his family. If there were no debts or family, then it was given to the vagrant at the end of his period of hire. However, if no one would hire the vagrant, the court could order the sheriff to give him twenty-five lashes on the bare back.

It was interesting to note that in 1839, in order to pre-

vent the increase in the number of vagrants, jurisdiction over these cases was vested in the circuit courts. Trials were the same as for high misdemeanors, and if the jury found the accused to be a vagrant, he could be bound out for a period determined by the jury.

In addition to the provisions which were made for the treatment of vagrancy by the counties, considerable attention was given to this problem by the municipalities. The first provision was made in Frankfort as early as 1809. Various devices were used to care for the vagrants such as hiring out to the highest bidder, or commitment to the workhouse where in some cases they were put at hard labor. After 1825, many towns were authorized to build a workhouse or a combined poorhouse-workhouse. These latter institutions were managed by the city authorities; the poor were placed in that part of the institution known as the poorhouse, and vagrants, beggars, and others were committed to the workhouse.

In both Virginia and Kentucky, apprenticeship was used as a means to care for orphans, poor, and illegitimate children. It was a device by which the community was relieved of the support of these children, and it provided for the education of the children in an art, trade, or business. Under the Virginia acts, boys were usually apprenticed until twenty-one years of age and girls until eighteen. In addition to being taught an art, trade, or business, the apprentices were taught to read and write, and if boys, they were taught common arithmetic including "the rule of three." Both boys and girls received £3 10s at the end of their period of indenture. The county courts were authorized to make the indentures, and hear the complaints of the apprentices, masters, or mistresses. These were the essential provisions of the Virginia acts of 1785 and 1786 which included poor orphans and children whose parents were incapable of supporting and "bringing them up in honest courses." Separate provision was made for the apprenticing of illegitimate children, but that discussion has been reserved for that part of this concluding chapter which treats of the problem of illegitimacy.[1]

The Kentucky apprenticeship acts of 1793 and 1797 were practically duplicates of the Virginia acts of 1785 and 1786 ex-

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[1]See below, pp. 149-51.

cept that the children in Kentucky were given a new suit of clothes at the end of their indenture as well as the £3 10s.

These early apprenticeship acts presented many problems which were of considerable interest to social workers. For instance, it was perfectly legitimate for the county courts to contract for additional advantages which, while not authorized by statute, were good at common law. Furthermore, the contracts were not personal and did not die with the master, except those parts which involved the master's teaching the apprentice an art or trade. While social workers would be interested to learn the reasons for binding out, the Court of Appeals held that the apprenticeship acts did not require that the reason be given, and in most instances it would be "obviously improper."

There were many other points concerning apprenticeship which were made clear by the Court of Appeals. The guardian, next friend, or custodian had a right to be present when a child was apprenticed, and the master was to be notified when an apprentice was discharged. Perhaps the most interesting point was the way in which the court regarded the relationship of master and apprentice as being analogous to that of parent and child. It was the duty of the master to compel the apprentice to avail himself of his opportunities, and not leave the child to his own discretion to decide whether or not he would use these opportunities. That was the reason the county courts could bind children to older persons and authorize them to use coercion to control a child's volition.

Another unusual feature of the Kentucky apprenticeship law was the distinction which was made between white and poor free negro children for whom special provision was made in 1825. Although the period of apprenticeship was the same as for white children, the educational requirements were slightly different and after 1843 the contracts of indenture did not have to include the teaching of reading and spelling.

During the 1830's and 1840's the mayors of several of the towns, Covington, Louisville, Maysville, and Newport, were given concurrent jurisdiction with the county courts in regard to apprenticeship. Simultaneously, a few private organizations and the mayor and city hospital of Lexington were authorized to make indentures.

The circuit courts, in 1847, were given the same jurisdic-

tion over indentures as the county courts, and in 1852, when the statutes were revised, many of the defects of the earlier acts were corrected, and no distinction was made between white children and poor free negro children. Under this act, the person with whom a child was living was to be summoned to show cause why the child should not be bound, and for the first time mothers, including unmarried mothers, could bind out their children. The freedom dues of £3 10s were abolished. The contracts were to be signed by the master and apprentice, and indicate the age of the apprentice, as well as the art, trade, or business to be taught. For the first time, the contracts provided for medical care and humane treatment as well as food and clothing. No distinction was made between boys and girls, but poor free negroes were not to be taught reading and writing. Lastly, the basis of complaints for both parties was greatly expanded, lack of "medical care" was now included as grounds for complaint by the apprentice, and "desertion or other misconduct" were added as additional grounds for the master.

Another aspect of this study with reference to illegitimate children revealed that the Kentucky acts seemed to meet the needs of these children much more effectively than the Virginia acts. The colonial act of Virginia, 1769, was obviously for the protection of the parish, and to relieve the parishes of the burden of supporting these children, rather than for the interest and welfare of the child. This position may be substantiated by the fact that only single women who were not servants or slaves could bring an action against the alleged father if he were not a servant, and if the child was or was likely to become chargeable to the parish. On the other hand, the Kentucky act of 1795 was much more broad in its scope as any single woman, not being a slave, could begin action against the alleged father. Nothing was said about the father not being a servant, and it was not necessary for the child to be chargeable or likely to become chargeable in order for the mother to prosecute the father. In other words, the Kentucky act was designed not only (1) to provide relief for the local community by charging the support of illegitimate children to their fathers, but, (2) to protect the welfare of the children, and (3) to give justice to the mothers in the enforcement of a natural obligation upon the fathers.

Although the Kentucky act of 1795 was a distinct improve-

ment over the Virginia act of 1785, it was far from being adequate. While provision was made for compelling the father to support the child, nothing was said about the amount or the period of support. In a Jefferson County case, the settlement of one hundred dollars a year for seventeen years was thought to be so excessive that it was taken up to the Court of Appeals which did not disturb the decision of the lower court, but said that the amount was more than was warranted in ordinary cases. Neither did the early Kentucky acts make any mention of the father's responsibility for the costs of medical care, or funeral costs. It also seemed that the act was designed for the benefit of white women. Negroes and mulattoes could avail themselves of the provisions of the act but they could not be a witness except in pleas of the Commonwealth against negroes or mulattoes, or in civil cases where they alone were the parties. Neither were they permitted to give evidence except between or against negroes or mulattoes.

There were many other defects of the acts such as the right of the father and mother to make contracts or settlements outside of court although such contracts were not a bar to a later prosecution of the father by the mother. As the Court of Appeals pointed out, a mother did not have to assert her statutory rights, and many might prefer the "wretchedness of destitution and poverty" rather than to begin action in a county court under the "bastardy act." It was encouraging to note that illegitimacy actions were regarded as civil not penal; therefore, a trial by jury was not necessary. On the other hand, the act was defective in that when a settlement was made with the father, the first payment was not due until one year from the date of the court action. This meant that not only were the allowances inadequate in many cases, negroes and mulattoes were practically excluded, and contracts outside of court were recognized as valid, but if a settlement were made, the mother and child received no assistance during the first year.

Some other findings of this study with reference to illegitimate children were concerned with the relationship of the child to the parents and the effect of a later marriage of the parents. It was interesting to note that the Kentucky act of 1796 was exactly the same as the Virginia act of 1785. The object of these acts was to repeal the common law doctrine that a child illegitimate at birth could never be made legitimate. Ac-

cording to these acts, the subsequent marriage of the parents, and recognition of the child by the father, made the child legitimate. There were several cases which came before the legislature in which the children were legitimated when recognized by the father after the marriage of the parents.

Lastly, the law with reference to the inheritance rights of the illegitimate child was significant in that these rights were so inferior to those of the legitimate child. The act of 1796, except for slight modifications in 1840, remained unchanged throughout the period of statehood prior to the Civil War. This act provided that illegitimate children were capable only of inheriting or transmitting inheritance on the part of their mother as if they were legitimate. Under the act of 1796, illegitimate children could not have either brothers or sisters; even if they were of the same mother, they could not derive an estate of inheritance from or through each other. They had no capacity to inherit or transmit to collateral kindred. Some of these difficulties were overcome in 1840 when the mother was given the right to inherit from her illegitimate children, and brothers and sisters born out of wedlock of the same mother were made capable of inheriting from each other. However, there was not yet a provision for inheritance between legitimate and illegitimate children of the same mother nor could illegitimate children inherit from the father. To overcome this latter problem it was not unusual for the fathers of such children to ask the legislature to change the name of the child to that of the father, legitimate the child, and give it full rights, as if legitimate in regard to the personal and real estate of the father.

APPENDIXES

APPENDIX I

LEGISLATIVE LAND GRANTS TO EX-SOLDIERS AND THEIR FAMILIES, 1813-1831[1]

Name of Soldier	Receiver of Grant	County	State Provision
1. John Penrod[a]	Widow and four children	Muhlenburg	R.S.P.W. 200 acres
2. Joseph Burris[a]	Widow	Hardin	R.S.P.W. 150 acres
3. Richard Hix[a]	Widow	Cumberland	R.S.P.W. 50 acres
4. William Harrel[a]	Widow and six children	Caldwell	R.S.P.W. 320 acres
5. John Flint[a]	Widow and five children	Living-ston	R.S.P.W. 200 acres
6. William Harris[a]	Widow and three children	N.R.	F.G. 150 acres
7. Russell Curtis[a]	Self	N.R.	F.G. 100 acres
8. James Sammons[a]	Self	Estill	R.S.P.W. 200 acres
9. Christopher Hardwick[a]	Three children	Henderson	400 acres
10. John Berry[a]	Widow and four children	Caldwell	F.G. 200 acres
11. Peter Bodine[a]	Widow	Hardin	F.G. 100 acres
12. Henry Brown[a]	Widow	Grayson	F.G. 100 acres
13. James Freeman[a]	Self	Whitley	R.S.P.W. 100 acres
14. John Henderson[c]	Self	Rockcastle	F.G. 150 acres
15. Richard Clark[a]	Self	Lewis	F.G. 50 acres
16. Samuel Curswell[a]	Self	Lewis	F.G. 50 acres

[1]The citations for these cases may be found in the following Acts of Kentucky: (1) December 24, 1813, chap. 95, sec. 1; (2) December 21, 1816, chap. 3, sec. 1; (3) January 17, 1817, chap. 24, secs. 1-2; (4) February 1, 1817, chap. 79, sec. 1; (5) February 1, 1817, chap. 79, sec. 2; (6) February 1, 1817, chap. 79, sec. 3; (7) January 17, 1818, chap. 178; (8) February 9, 1819, chap. 404; (9) February 9, 1819, chap. 410; (10) February 9, 1819, chap. 422, secs. 1-2; (11) January 12, 1819, chap. 321, sec. 1; (12) January 12, 1819, chap. 321, sec. 2; (13) December 9, 1820, chap. 87; (14) January 25, 1820, chap. 485; (15-16) December 14, 1821, chap. 269;

Name of Soldier	Receiver of Grant	County	State Provision
17. Abner Russell[e]	Self	Casey	F.G. 100 acres
18. Thomas Baker[d]	Self	Henderson	F.G. 100 acres
19. Thomas Conner[e]	Self	Casey	F.G. 100 acres
20. William Proctor[a]	Widow	Monroe	R.S.P.W. 350 acres
21. William Edens[d]	Self	Casey	F.G. 50 acres
22. Alexander Guffey[c]	Self	Logan	R.S.P.W. 200 acres
23. James Kerr[a]	Widow and Children	Logan	F.G. 100 acres
24. George Corn[b]	Self	Boone	F.G. 200 acres
25. Samuel Foster[a]	Self	Boone	F.G. 100 acres
26. John Rickey[d]	Self	N.R.	R.S.P.W. 125 acres
27. William Durrington[b]	Self	Caldwell	F.G. 100 acres
28. George Taylor[b]	Self	Adair	F.G. 178 acres
29. James Williamson[b]	Self	Allen	R.S.P.W. 200 acres
30. John Hart[b]	Self	Caldwell	F.G. 150 acres

(17) November 26, 1822, chap. 404, secs. 2,3; November 26, 1822, chap. 404, secs. 3-4; (19) November 26, 1822, chap. 404, secs. 4-5; (20) December 19, 1823, chap. 621; (21) January 1, 1824, chap. 551, secs. 2-3; (22) January 7, 1824, chap. 674; (23) December 14, 1825, chap. 38, sec. 1; (27) December 30, 1824, chap. 71, secs. 3-4; (28) December 21, 1825, chap. 153, sec. 4; (29) January 25, 1827, chap. 114, sec. 1; (30) December 22, 1831, chap. 698.

[a]Indigent
[b]Indigent, aged, and infirm
[c]Indigent and disabled
[d]Indigent and aged
[e]Indigent, aged, and blind

R.S.P.W. Remaining state payments waived
F.G. Free grant

APPENDIX II

LEGISLATIVE LAND GRANTS TO INDIGENT WIDOWS AND OTHERS, 1800-1833[1]

Name	County	Marital Status of Recipient	State Provision
1. Christine Tully[a]	N.R.	Widow	D.P.-200 acres
2. Josiah Young's children[a]	Livingston	N.R.	D.P.-200 acres
3. John Bland[b]	N.R.	N.R.	R.S.P.W.-200 acres
4. Jane Ruby[a]	N.R.	Widow	D.P.-200 acres
5. Jeremiah Shelton[c]	Logan	N.R.	R.S.P.W.-200 acres
6. Sarah Bristoe[a]	Adair	Widow	D.P.-100 acres
7. Andrew Grisal[a]	Logan	N.R.	R.S.P.W.-200 acres
8. Matthew Singleton[b]	Lincoln	Married	R.S.P.W.-245 acres
9. John Barns[b]	Pulaski	Married	R.S.P.W.-200 acres
10. Susannah Lancaster[a]	Logan	Widow	R.S.P.W.-200 acres
11. John D. Williams[e]	Barren	N.R.	R.S.P.W.-200 acres
12. Mary Burke[a]	Nelson	Widow	R.S.P.W.-100 acres
13. Isaac Rayfield[e]	Cumberland	Married	R.S.P.W.- 50 acres
14. David Meek[e]	Pulaski	Married	R.S.P.W.-122-1/2 acres
15. Charles Blakely[a]	Knox	Married	R.S.P.W.-124 acres
16. James Williams[a]	Wayne	Married	R.S.P.W.-156 acres

[1]The citations for these cases may be found in the following Acts of Kentucky: (1) December 18, 1800, chap. 6, secs. 1-2; (2) November 28, 1801, chap. 46, sec. 1; (3) December 13, 1802, chap. 29, sec. 1; (4) December 23, 1803, chap. 45, secs. 1-2; (5) December 6, 1803, chap. 64, sec. 1; (6) February 16, 1808, chap. 60; (7) January 30, 1810, chap. 144, sec. 2; (8) December 17, 1810, chap. 192; (9) January 16, 1813, chap. 33; (10) January 10, 1815, chap. 181, sec. 1; (11) January 14, 1815, chap. 189, sec. 1; (12) January 24, 1812, chap. 328, secs. 1-2; (13) January 28, 1812, chap. 332, sec. 1; (14) January 13, 1812, chap. 309, sec. 1; (15) January 13, 1812, chap. 310, sec. 1; (16) February 8, 1816, chap. 360, sec. 1;

Name	County	Marital Status of Recipient	State Provision
17. William Spiers[a]	Lincoln	Married	R.S.P.W.-200 acres
18. Polly Robertson[a]	Adair	Widow	R.S.P.W.-100 acres
19. Benjamin Williams[a]	Barren	N.R.	R.S.P.W.-192 acres
20. Leah M'Gonegle[a]	Cumberland	Widow	R.S.P.W.-50 acres
21. Elizabeth Prichard[a]	N.R.	Widow	R.S.P.W.-130 acres
22. Sally W. Boler[a]	Logan	Deserted	R.S.P.W.-200 acres
23. Henry Martin[a]	Casey	Married	R.S.P.W.-100 acres
24. Mary Ward[a]	Knox	Widow	R.S.P.W.-50 acres
25. John D.Pearce[e]	N.R.	Married	F.G.-800 acres
26. Esther Loffton[a]	Livingston	Widow	R.S.P.W.-250 acres
27. Francis M'Dermit[a]	Wayne	N.R.	R.S.P.W.-50 acres
28. Jane Miller[a]	Knox	Widow	R.S.P.W.-50 acres
29. Samuel Teer[a]	Union	Married	F.G.-200 acres
30. Elizabeth Martin[a]	Cumberland	Widow	R.S.P.W.-128 acres
31. Betsy Cromeans[a]	N.R.	Widow	R.S.P.W.-82 acres
32. Samuel Gadberry[b]	Casey	Married	F.G.-100 acres
33. John White[e]	Estill	Married	F.G.-150 acres
34. Nancy Godby[b]	Pulaski	Widow	R.S.P.W.-50 acres
35. Hetty Hall[a]	N.R.	Widow	F.G.-200 acres
36. James Williams[e]	Pendleton	Married	F.G.-500 acres
37. Mary Neal[a]	Wayne	Widow	F.G.-100 acres
38. Mary Webb[a]	Clay	Widow	F.G.-100 acres
39. Andrew Lore[a]	Clay	N.R.	F.G.-100 acres
40. Mary Folden[a]	Adair	Widow	R.S.P.W.-150 acres
41. Betsy Horton[a]	Lincoln	Widow	R.S.P.W.-50 acres
42. Ann Mitchell[a]	N.R.	Widow	R.S.P.W.-100 acres
43. Jacob Wall[a]	Casey	N.R.	R.S.P.W.-100 acres

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(17) February 10, 1816, chap. 369, sec. 1; (18) February 10, 1816, chap. 372, sec. 1; (19) February 10, 1816, chap. 375, sec. 1; (20) February 3, 1816, chap. 330, sec. 1; (21)February 8, 1816, chap. 355, sec. 1; (22) January 30, 1817, chap. 69, sec. 1; (23) January 30, 1817, chap. 73, sec. 1; (24) February 4, 1817, chap. 118, sec.1; (25) February 5, 1817, chap. 148, sec. 1; (26) December 15, 1817, chap. 158; (27) January 2, 1818, chap. 165; (28) January 28, 1818, chap. 207, secs. 4-5; (29) January 30, 1818, chap. 222, sec. 1; (30) January 30, 1818, chap. 240, sec. 1; (31) Jan. 30, 1818, chap. 240, sec. a; (32) January 31, 1818, chap. 246, sec. 1; (33) January 31, 1818, chap. 258; (34) January 21, 1819, chap. 335, sec. 1; (35) February 6, 1819, chap. 393, sec. 1; (36) February 9, 1819, chap. 409; (37) November 16, 1820, chap. 25, sec. 1; (38) November 16, 1820, chap. 25, sec. 2; (39) November 16, 1820, chap. 25, sec. 3; (40) November 23, 1820, chap. 36, sec. 2; (41) December 12, 1820, chap. 102; (42) December 16, 1820, chap. 115, secs. 1-2; (43) December 16, 1820, chap. 115, sec. 3;

	Name	County	Marital Status of Recipient	State Provision
44.	Delilah Whitehead[a]	Harlan	Widow	R.S.P.W.-200 acres
45.	John McKinney[a]	Rockcastle	N.R.	F.G.-100 acres
46.	John Strange's children[a]	Casey	N.R.	F.G.-200 acres
47.	Sally Lawrence[a]	Clay	Widow	R.S.P.W.-50 acres
48.	John White[a]	Adair	N.R.	R.S.P.W.-200 acres
49.	Margaret Watson[a]	N.R.	N.R.	R.S.P.W.-200 acres
50.	Samuel Simpson[c]	Harlan	N.R.	F.G.-100 acres
51.	Polly Parker[a]	Pendleton	Abandoned	F.G.-200 acres
52.	Jane Stone[a]	Adair	Widow	R.S.P.W.-160 acres
53.	Sarah Anderson[a]	Cumberland	Widow	R.S.P.W.-50 acres
54.	Joseph Crawford[a]	Estill	N.R.	F.G.-50 acres
55.	William Scott[c]	Wayne	Married	F.G.-100 acres
56.	Sally McGalin[a]	Casey	Deserted	F.G.-100 acres
57.	Nathan Hawkins[d]	Christian	Married	R.S.P.W.-200 acres
58.	Thomas Conaway[a]	Allen	N.R.	R.S.P.W.-100 acres
59.	James Kirkham's heirs[a]	Warren	N.R.	R.S.P.W.-133-1/3 acres
60.	Archibald Mitchell's heirs[a]	Warren	N.R.	R.S.P.W.-200 acres
61.	Burrel Temple[a]	Allen	Married	R.S.P.W.-90 acres
62.	Richard Dorin[c]	Nelson	Married	F.G.-100 acres
63.	David Pruitt[a]	Rockcastle	Married	F.G.-100 acres
64.	Esther Grimes[a]	Butler	Widow	R.S.P.W.-100 acres
65.	Susannah Looney[a]	Cumberland	Widow	R.S.P.W.-181 acres
66.	Robert Singleton's children[a]	Lincoln	N.R.	R.S.P.W.133-1/3 acres
67.	John Phemister[a]	Adair	Married	R.S.P.W.-100 acres
68.	John Wheeldon[a]	Lincoln	Married	F.G.-100 acres
69.	Braddock Baker[a]	N.R.	Married	F.G.-50 acres
70.	Kinson Cannon's children[a]	Livingston	N.R.	R.S.P.W.-400 acres

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(44) Dec.16, 1820, chap. 115, sec. 4; (45) December 23,1820, chap. 143, sec. 2; (46) January 25, 1820, chap. 483; (47) February 4, 1820, chap. 504, secs. 1-2; (48) November 5, 1821, chap. 189, sec. 1; (49) November 5, 1821, chap. 190; (50) November 5, 1821, chap. 247, sec. 1; (51) December 6, 1821, chap. 251; (52) February 4, 1820, chap. 508; (53) December 14, 1821, chap. 282, secs. 1-2; (54) December 20, 1821, chap. 319, sec. 1; (55) November 7, 1822, chap. 360, sec. 1; (56) November 7, 1822, chap. 360, sec. 2; (57) November 12, 1822, chap. 364, sec. 1; (58) November 12, 1822, chap. 366, sec. 1; (59) November 14, 1822, chap. 373; (60) November 14, 1822, chap. 374; (61) November 26, 1822, chap. 404, sec. 1; (62) November 26, 1822, chap. 404, sec. 2; (63) November 26, 1822, chap. 404,sec. 5; (64) December 7, 1822, chap. 484; (65) December 10, 1822, chap. 490, secs. 1-2; (66) December 11, 1822, chap. 522, secs. 1-2; (67) November 24, 1823, chap. 554; (68) November 24, 1823, chap. 558; (69) December 1, 1823, chap. 577; (70) December 5, 1823, chap. 587;

	Name	County	Marital Status of Recipient	State Provision
71.	Peter Breeding[b]	Casey	Married	F.G.- 50 acres
72.	Polly Sandefur[a]	Casey	Deserted	F.G.-100 acres
73.	Gaithus Fox[a]	Casey	Married	F.G.- 50 acres
74.	Lydia Smith[a]	Allen	Widow	R.S.P.W.-400 acres
75.	Nancy Cravens[a]	Green	Widow	F.G.-300 acres
76.	Barbara Price[a]	Adair	Widow	R.S.P.W.- 100 acres
77.	Henry Miller[a]	Allen	N.R.	R.S.P.W.-100 acres
78.	Peter Anderson[d]	Allen	N.R.	R.S.P.W.-400 acres
79.	James Gilpin[b]	Adair	Married	F.G.-100 acres
80.	Rebecca Watson[a]	Allen	Abandoned	R.S.P.W.-50 acres
81.	Margaret Shockley[a]	N.R.	Widow	F.G.-500 acres
82.	Jacob Renner[a]	Rockcastle	N.R.	R.S.P.W.-150 acres
83.	Massey Anderson[a]	Warren	Widow	R.S.P.W.-200 acres
84.	Agnes Punteny[a]	Logan	Widow	R.S.P.W.-200 acres
85.	William Davis[a]	Butler	Married	F.G.-80 acres
86.	Tempy Gupton[a]	Muhlenburg	Widow	R.S.P.W.-100 acres
87.	Cassandria Abrell[a]	Green	Widow	R.S.P.W.-400 acres
88.	Obadiah Woodrum[a]	N.R.	Married	R.S.P.W.-190 acres
89.	Isaac William's heirs[a]	Lincoln	N.R.	R.S.P.W.-385 acres
90.	Sarah Harrison's children[a]	Allen	N.R.	R.S.P.W.-400 acres
91.	Squire Griffin[c]	Pulaski	N.R.	R.S.P.W.-400 acres
92.	John Prewitt[a]	Knox	N.R.	R.S.P.W.-114 acres
93.	Lydia Rayne[a]	Pulaski	Widow	F.G.-100 acres
94.	Richard Hart[d]	Pulaski	Married	R.S.P.W.-294 acres
95.	Polly Miller[a]	N.R.	Widow	R.S.P.W.-100 acres
96.	Dorcas Worley[a]	Whitley	Widow	R.S.P.W.-200 acres
97.	Jacob Miller[e]	Simpson	Married	F.G.-160 acres

(71) January 1, 1824, chap. 651, sec. 1; (72) January 1, 1824, chap. 651, sec. 2; (73) January 1, 1824, chap. 651, sec. 4; (74) January 5, 1824, chap. 669, sec. 1; (75) January 7, 1824, chap. 726; (76) November 25, 1824, chap. 16, secs. 1-2; (77) December 6, 1824, chap. 33, sec. 1; (78) December 6, 1824, chap. 33, sec. 2; (79) December 29, 1824, chap. 67; (80) January 7, 1825, chap. 106, sec. 1; (81) January 7, 1825, chap. 107; (82) December 9, 1825, chap. 28; (83) December 21, 1825, chap. 114, sec. 1; (84) January 10, 1825, chap. 117; (85-86) December 21, 1825, chap. 139; (87) December 21, 1825, chap. 153, sec. 1; (88) January 22, 1827, chap. 64, sec. 1; (89) January 22, 1827, chap. 72, sec. 1; (90) January 24, 1827, chap. 85, sec. 1; (91) January 24, 1827, chap. 85, sec. 2; (92) January 29, 1829, chap. 80, sec. 2; (93) February 13, 1828, chap. 175, sec. 2; (94) January 5, 1829, chap. 47, sec. 1; (95) January 29, 1830, chap. 346, sec. 2; (96) January 4, 1833, chap. 53; (97) February 1, 1833, chap. 213.

[a] Indigent
[b] Indigent and ill
[c] Indigent and blind
[d] Indigent, aged, and ill
[e] Indigent and crippled

R.W.P.W. Remaining state payments waived
F.G. Free grant
D.P. Delayed payment